

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

LORIN NIEWINSKI, JOHN BAKER)	
MCCLANAHAN as Personal Representative of)	
THE ESTATE OF MELISSA BUCHANAN,)	
ROBERT A. BOZAICH, RONNIE JACKSON,)	
and SHERIF B. BOTROS, Individually and on)	
Behalf of All Others Similarly Situated,)	
)	
Plaintiffs,)	Case No. 2:23-cv-04159-BP
)	
vs.)	
)	
STATE FARM LIFE INSURANCE)	
COMPANY and STATE FARM LIFE AND)	
ACCIDENT ASSURANCE COMPANY,)	
)	
Defendants.)	
)	

**PLAINTIFFS’ MOTION AND SUGGESTIONS IN SUPPORT OF MOTION
FOR ATTORNEY’S FEES, COSTS, EXPENSES, AND SERVICE AWARDS**

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Class Counsel respectfully move this Court for entry of an order approving the payment of attorney’s fees of 33⅓ percent of the Settlement Fund,¹ reimbursement of their unreimbursed expenses reasonably incurred by Class Counsel in litigating this action, presently at \$824,678.54, and payment of service awards of \$25,000 for each of the Class Representatives.² The legal and factual bases supporting this motion are set forth below and in the accompanying Joint Declaration of Norman E. Siegel, John J. Schirger, Nathaniel C. Giddings, David Wilkerson, and Sophia Gold (the “Joint Declaration”; attached as **Exhibit 1**).³

I. INTRODUCTION

The \$65 million non-reversionary cash Settlement secured from Defendants (collectively, “State Farm”) represents an excellent all-cash settlement related to claims for allegedly improper cost of insurance (“COI”) overcharges. The settlement follows the jury verdict and judgment in *Vogt v. State Farm*, and the subsequent nationwide settlement in *Rogowski v. State Farm* involving similar State Farm policies. To achieve the result presented here, Class Counsel worked for over four years filing and prosecuting separate lawsuits pending in two different jurisdictions. Jt. Decl., ¶¶ 27, 29, 34. Class Counsel faced extraordinary risk representing the Settlement Class in separate

¹ Unless noted, capitalized terms are defined in the Settlement Agreement, attached as Exhibit 1 to Plaintiffs’ Motion for Preliminary Approval. Dkt. 3.

² Class Counsel will submit a proposed order at least seven days prior to the March 28, 2024, Fairness Hearing.

³ Class Counsel also attach the Declaration of Professor Robert H. Klonoff Relating to Attorneys’ Fees, Costs, and Service Awards (“Klonoff Declaration,” attached as **Exhibit 2**), filed in *Rogowski v. State Farm Life Ins. Co.*, Case No. 22-cv-00203-RK (W.D. Mo. Feb. 13, 2023) (Dkt. 59-2). Professor Klonoff expressly granted Class Counsel permission to cite his declaration in this case. The *Rogowski* litigation against State Farm involved successor policy forms that contain similar policy language as the policy forms in this case, and, as with this matter, it involved the application of law from different jurisdictions with mixed results. Therefore, much of the analysis Professor Klonoff conducted in *Rogowski* applies with equal weight here.

cases and were confronted with the reality that they would likely have to file additional cases in other states. *See id.*, ¶ 24.

Specifically, Class Counsel worked on a fully contingent basis, investing over 9,400 hours of labor—with more work to come—and advancing over \$800,000 in out-of-pocket costs without any guarantee of success. *Id.*, ¶¶ 29-34. Class Counsel did so despite State Farm having demonstrated it would strenuously litigate the cases through trial and appeals. *Id.*, ¶¶ 2, 23. Indeed, far from any guarantee that they would be paid for their work or reimbursed their expenses, Class Counsel faced off against a well-funded and entrenched opponent represented by *two* of the largest and most well-resourced defense firms in the country, representing a well-resourced Defendant.

Class Counsel performed a significant amount of legal work before reaching this Settlement. The work included hundreds of pages of briefing, review of over 425,000 pages of documents produced, and 20 depositions. *Id.*, ¶¶ 7, 10-11. Importantly, unlike many large class-action settlements, Class Counsel did not piggyback on a government investigation or rely on defendants' public admissions of culpability; to the contrary, Class Counsel are the nationwide leaders in prosecuting claims for alleged COI overcharges, having completed several successful class-action jury trials and settled three prior nationwide cash-based COI settlements. *Id.*, ¶ 27; *see also* Siegel Decl. in Supp. of Preliminary Approval (Dkt. 3-4), ¶¶ 9-12 (highlighting Class Counsel's experience). This Settlement therefore represents the culmination of their wholly contingent and considerable work seeking a recovery against State Farm for this Settlement Class, not the work of anyone else.

Under well-established precedent, Class Counsel is entitled to an award of reasonable attorney's fees and reimbursement of the case expenses from the Settlement Fund. As elsewhere, in the Eighth Circuit, a fee based on a percentage of the fund recovered is the favored approach

for calculating attorney's fees in the case of contingent representation, including class actions. Such a fee provides an incentive for attorneys like Class Counsel to represent individuals like those in the Settlement Class, whose individual claims might otherwise be too small to justify the costs of litigation. And a percentage-based recovery allows individuals without the means to pay counsel by the hour to nonetheless assert their claims. A percentage-based recovery also aligns Class Counsel's interests with those of their clients because the greater the recovery Class Counsel obtains, the greater fee to which Class Counsel is entitled.

The reasonableness of the requested fee is measured by a multi-factor analysis (the "*Johnson* factors") that importantly includes the results achieved against the risks faced, the risk to Class Counsel in taking the case on a contingent-fee basis, and awards in similar cases. Each of these factors, along with the other *Johnson* factors, support a fee equal to 33⅓ percent of the Settlement Fund.

First, 33⅓ percent is a customary percentage in class actions in this Circuit, and it is lower than contingent-fee percentages in individual, private litigation, where rules of professional conduct mandate that a fee be reasonable using factors similar to the *Johnson* factors. In *Rogowski v. State Farm Life Insurance Co.*, which involved the settlement of a successor policy form and similar COI breach, the District Court (the Hon. Roseann A. Ketchmark) awarded class counsel 33⅓ percent of the settlement obtained—the same percentage sought here—applying the *Johnson* factors. Moreover, the District Court (the Hon. Nannette K. Laughrey) in *Vogt v. State Farm Life Insurance Co.* likewise awarded class counsel 33⅓ percent of the judgment obtained, again on similar claims related to the successor policy form.

Second, the risk to Class Counsel was extraordinary. Class Counsel pursued claims against State Farm in two different jurisdictions for more than four years. State Farm hired two of the

country's largest and most well-resourced defense firms, and many of the top lawyers at those firms. Class Counsel obtained a favorable class-certification ruling prior to the Settlement in one case, but in the other case the court found the claims barred by the statute of limitations, demonstrating the uncertainty and risk inherent in the litigation. The Settlement was not reached until both cases had been litigated through discovery and one case through summary judgment and pending appeal (the other case was closely behind, only awaiting the court's summary judgment ruling). Further demonstrating the ongoing risk in litigating these cases were the mixed results achieved in numerous COI cases in various jurisdictions and involving the same or similar claims against other insurers. Many of those COI cases produced no recovery. And the cases involving State Farm's successor policy form produced both favorable and unfavorable rulings. Indeed, as for favorable rulings regarding State Farm's successor policy form, State Farm maintained that there were significant factual differences between the policy forms, and thus, these prior rulings offered limited value.

Third, the results achieved are excellent, especially considering the overall size of the Settlement and the risks associated with the claims and proving damages. In short, the fee is reasonable under the *Johnson* factors.

The fee is reasonable even when assessing the requested fee under a "lodestar crosscheck." Although not required in the Eighth Circuit, this crosscheck compares the percentage-based fee to Class Counsel's "lodestar" (hours expended multiplied by non-contingent hourly rates). Some courts use the crosscheck to assess whether additional scrutiny of the fee is necessary to ensure counsel is not receiving an unfair "windfall" untethered to their legal efforts. Importantly, however, even when applied, courts are clear that this crosscheck does not supplant the percentage-based-*Johnson*-factors analysis. Nonetheless, given the extraordinary investment of time already

expended and time that will be spent on post-settlement work, the fee results in a modest “multiplier” of approximately 2.73. *See* Jt. Decl., ¶ 29. That a larger multiplier would be reasonable given the circumstances of this case and risks to Class Counsel, only underscores the reasonableness of the multiplier and requested fee.

Finally, Class Counsel also request reimbursement of expenses in the amount of \$824,678.54 (to be updated prior to final approval), and for the Court to approve service awards of \$25,000 to each Class Representative to compensate them for their efforts on behalf of the Settlement Class. The Class Representatives were not only negatively impacted by State Farm’s contractual breach, but also provided key support to the litigation, including helping to develop and review the factual allegations in each complaint and providing key guidance with respect to the Settlement. *Id.*, ¶ 36. In addition, McClanahan and Millwood sat for depositions and answered discovery. *Id.* In short, the requested fees, expenses, and service awards are legally and factually appropriate.

II. FACTS

A. Case History.

This is the third and final chapter in nationwide litigation involving State Farm’s universal life policies. The first case, *Vogt v. State Farm*, was brought on behalf of Missouri policyholders who owned universal life insurance policies issued on State Farm’s Form 94030. Jt. Decl., ¶ 2. That case was litigated through trial and several appeals and resulted in State Farm paying a \$40 million judgment. *Id.* The second round of litigation, which involved ten cases in different federal courts across the country, included owners of the Form 94030 policy outside of Missouri. *Id.* After several years of highly contested litigation, the second phase of the litigation ultimately resulted in a \$325 million settlement in *Rogowski v. State Farm. Id.*

This settlement involves resolution of a similar State Farm universal life policy known as Form 86040. *Id.*, ¶ 3. While the policy language of Form 86040 is similar to Form 94030, the language is not identical, which increases the possibility courts may construe the policies differently. *Id.* Moreover, State Farm insists that Form 94030 cases are materially different than Form 86040 litigation. For example, while State Farm claims it had no obligation to lower COI Rates for any of the policies, it lowered COI Rates for Form 86040 policies four times in 1987, 1990, 2002, and 2008 (compared to only once for Form 94030 policies), and as a result, State Farm contends policyholders could be found to be differently situated in terms of the COI Rates charged and how the rate reductions impacted them, if at all. *Id.* State Farm also alleges it developed COI Rates differently for Form 86040 compared to Form 94030, and that COI Rates for Form 86040 are lower than the Form 94030 policies. *Id.* According to State Farm, this difference means that a sizable number of Form 86040 policyholders may not have suffered any damages. *Id.*

Nevertheless, Class Counsel litigated two Form 86040 cases in different jurisdictions on behalf of Settlement Class Members. *Id.*, ¶ 4. In one case, Class Counsel successfully obtained a certification ruling; in the other, however, the case was dismissed on statute of limitations grounds but was quickly appealed. *Id.* The culmination of these efforts is the present Settlement, which, if approved, will require State Farm to pay a non-reversionary sum of \$65 million to resolve the claims brought in the litigation. *Id.*

To achieve this result for the Settlement Class, Class Counsel performed a massive amount of work—more than 9,400 hours—on a contingent basis, working for more than four years. *Id.*, ¶¶ 27, 29-30. Additionally, based on time records from prior COI settlements, Class Counsel estimates they will conservatively spend approximately another 1,888 hours administering the Settlement, which does not include any time necessary to obtain final approval or potentially

defend any judgment on appeal. *Id.*, ¶ 29. Class Counsel thus conservatively expects they will spend more than 11,300 hours representing the Settlement Class. *Id.* A more complete recitation of Class Counsel’s substantial efforts resulting in this settlement follows.

1. The Initial Litigation.

On May 17, 2019, Class Representatives Gettys Bryant Millwood (“Millwood”) and John Baker McClanahan as Personal Representative of the Estate of Melissa Buchanan (“Buchanan”) filed their putative class action complaint against State Farm on behalf of themselves and similarly situated classes of Tennessee and South Carolina holders of State Farm universal life insurance policies (the “Policy” or “Policies”) who, Millwood and Buchanan alleged, had been forced to pay unlawful and excessive COI charges to State Farm. *See* Compl., *Millwood v. State Farm Life Ins. Co.*, No. 7:19-cv-01445 (D.S.C.) (Dkt. 1). This complaint alleged that State Farm breached the terms of its Policies because it (1) did not base its COI Rates on the insured’s “age, sex, and applicable rate class,” and (2) made adjustments to its COI Rates by including other undisclosed factors in its calculations rather than on “projected changes in mortality.” *Id.*

After years of discovery and briefing, as set forth in more detail below, Millwood and Buchanan’s claims were severed into two actions: one on behalf of South Carolina consumers (the “*Millwood* Action”), which remained in the United States District Court for the District of South Carolina, and one on behalf of Tennessee consumers (the “*Buchanan* Action”), which was transferred to the United States District Court for the Western District of Tennessee. *See* Order, *McClanahan v. State Farm Life Ins. Co.*, No. 1:22-cv-01031 (W.D. Tenn.) (Dkt. 161).

2. Class Counsel Undertook Substantial Written Discovery

Shortly after filing the first lawsuit, Plaintiffs propounded and responded to substantial written discovery. Specifically, Plaintiffs propounded 21 interrogatories and 58 document requests. *Jt. Decl.*, ¶ 7. In response, State Farm produced more than 47,000 documents, spanning

more than 425,000 pages to Plaintiffs. *Id.* In addition, Plaintiffs responded to 40 interrogatories and 45 document requests propounded by State Farm on Plaintiffs. *Id.* In total, Plaintiffs produced more than 200 documents, spanning nearly 3,200 pages to State Farm. *Id.* In furtherance of these efforts, Class Counsel engaged in numerous meet and confers with State Farm's counsel and reviewed countless documents (both that had been received and that would be produced). *Id.*, ¶ 8.

The parties were not always able to reach an agreeable resolution of their discovery disputes. As a result, Class Counsel prepared and argued two motions to compel. *Id.* Ultimately, Plaintiffs and State Farm were able to resolve these motions with the assistance of the Court. *Id.* In addition, Class Counsel pursued and received significant non-party discovery. Specifically, after State Farm designated four State Farm agents as potential witnesses in the case, Class Counsel promptly served Rule 45 subpoenas, which resulted in the production of more than 500 pages of documents from these non-parties. *Id.*, ¶ 9.

3. Class Counsel Undertook Substantial Testamentary Discovery

Based on their review of the written discovery, Class Counsel deposed State Farm's 30(b)(6) designee, seven additional State Farm employees, and four State Farm agents. *Id.*, ¶ 10. In addition, State Farm took the depositions of Millwood, Millwood's power of attorney, and Buchanan. *Id.* Class Counsel prepared for and participated in each of these fact-witness depositions. *Id.* In total, more than 200 exhibits were introduced across these depositions. *Id.*, ¶ 13.

4. Class Counsel Undertook Substantial Expert Discovery

State Farm relied on four putative experts, whereas Plaintiffs relied on a single expert, Larry Stern. *Id.*, ¶ 12. In total, State Farm's experts submitted four reports, spanning more than 200 pages, which Class Counsel necessarily reviewed and analyzed. *Id.*, ¶ 15. In addition, Class Counsel took the depositions of three of State Farm's experts, whereas State Farm took the

deposition of Plaintiffs' expert twice. *Id.* Class Counsel prepared for and participated in each of these expert depositions. *Id.* Ultimately, Plaintiffs and State Farm filed cross-*Daubert* motions. *Id.*, ¶ 16. In total, the parties exchanged more than 250 pages of *Daubert* briefing, excluding exhibits. *Id.*

State Farm's four retained experts offered opinions covering distinct subject matters directed at both liability and damages. *Id.*, ¶ 12. For example, one of State Farm's experts was a former state insurance commissioner and executive at the National Association of Insurance Commissioners who opined that the Policy as interpreted by Plaintiffs could not have obtained approval for sale under state insurance regulatory standards. *Id.*, ¶ 13. Another of State Farm's experts was identified as a consumer-expectations expert who opined that prospective policyholders would have expected State Farm to include profit and expenses in its COI Charge. *Id.* A third State Farm expert was an actuary who accused Plaintiffs' expert Mr. Stern of, among other things, failing to follow actuarial standards. *Id.* And State Farm's fourth expert witness, an economist, opined on, *inter alia*, alleged intraclass conflicts, the absence of any injury to any policyholder, and damages. *Id.* Class Counsel developed individual strategies for responding to each expert. *Id.*

As for Plaintiffs' expert, Mr. Stern analyzed a huge volume of data to produce a class-wide damages model. *Id.*, ¶ 14. Class Counsel worked extensively with Mr. Stern, including engaging in numerous meet-and-confers with State Farm's counsel to understand State Farm's data, and its limitations, which was necessary for Mr. Stern to construct his model. *Id.* Class Counsel's efforts were crucial to their representation of the Settlement Class. Although State Farm filed two *Daubert* motions against Mr. Stern, neither were granted as of the date of the Settlement. *Id.*, ¶ 16.

5. Class Counsel Undertook Substantial Motion Practice

In addition to the motions referenced above, Class Counsel also fully briefed class certification and cross-motions for summary judgment in the *Millwood* and *Buchanan* Actions. *Id.*, ¶ 17. In total, Plaintiffs' class certification and summary judgment briefs, excluding exhibits, spanned more than 200 pages, whereas Defendants' class certification and summary judgment briefs, excluding exhibits, spanned more than 150 pages. *Id.* In total, the parties identified and submitted more than 150 exhibits in connection with the class certification and summary judgment briefs. *Id.*

6. Class Counsel Obtained Mixed Results in the *Millwood* and *Buchanan* Actions

In September 2022, the court overseeing the *Millwood* Action certified the litigation class. *Id.*, ¶ 18. The Fourth Circuit subsequently denied State Farms Rule 23(f) petition, and the case appeared to be headed full-speed toward trial. *Id.* In April 2023, that same court denied the parties' cross-motions for summary judgment and Plaintiffs' *Daubert* motions, but left State Farm's *Daubert* motion unresolved. *Id.* Additionally, the court permitted supplemental briefing on the applicability of State Farm's statute of limitations defense. *Id.*

At roughly the same time, in February 2023, the court overseeing the *Buchanan* Action granted State Farm's motion for summary judgment. *Id.*, ¶ 19. Class Counsel subsequently filed a motion for reconsideration, which was denied, and then Class Counsel filed a notice of appeal in June 2023. *Id.*

7. Class Counsel's Negotiation of a Nationwide Settlement and the Filing of this Action

Informed by the mixed rulings in the *Millwood* and *Buchanan* Actions, along with the collective experience in *Vogt* and *Rogowski*, Class Counsel and State Farm participated in a mediation overseen by Judge Layn Phillips (Ret.) in June 2023. *Id.*, ¶ 20. While the parties were

unable to reach a settlement during the mediation session, they were able to do so after with the continued assistance of Judge Phillips. *Id.* Consistent with the terms of the Settlement, on August 22, 2023, Class Counsel filed the present action, together with a motion for preliminary approval. *Id.*, ¶ 21.

The complaint filed in this case, building off the above-described years of discovery and litigation, challenges how State Farm set its COI Charge and whether it was overcharging policyholders under either the COI Charge or Expense Charge provisions of the Policy, as well as if it was required to lower COI Rates when its expectations as to future mortality experience improved. Compl., ¶¶ 1, 4-5 (Dkt. 1). Specifically, Plaintiffs alleged that the Policy language describing the COI Rates did not permit State Farm to include profits or expenses in the COI Charges because those factors were not listed among the mortality-related factors identified as the basis for the COI Rates and because the Policy capped expenses at \$4 per month. *Id.*, ¶¶ 53-55, 58-60. Furthermore, because the Policy provided factors to determine COI Rates identified only mortality factors, Plaintiffs allege that State Farm was required to lower COI Rates when its expectations as to future mortality experience improved, and moreover that when State Farm did adjust COI Rates it was required to adjust them in accordance with its mortality improvement. *Id.*, ¶¶ 63-81. Plaintiffs alleged claims for breach of contract, breach of the covenant of good faith and fair dealing, as well as claims for conversion—all of which depended on these allegations and the above Policy interpretation. *Id.*, ¶¶ 117-40.

B. State Farm’s Defenses Required an Extraordinary Level of Work by Class Counsel on a Contingent-Fee Basis.

Novel and complex litigation, especially against such well-recognized defense counsel, takes extra skill and effort, and that was true here. This case fits that mold.

Unlike most class actions, the *Millwood* and *Buchanan* Actions were litigated in separate forums, even though they involved common questions of fact. Prosecuting the same set of facts in different jurisdictions, which potentially apply varying laws before different and independently minded judges, presented unique risks to Class Counsel and required exponentially more effort than a consolidated multi-state class action. Joint Decl., ¶ 22.

As set forth above, State Farm mounted a comprehensive and separate defense in each case, requiring an equally forceful prosecution by Class Counsel. *Id.*, ¶ 23. State Farm retained and was represented by two of the country's largest and most well-resourced defense firms during the litigation. *Id.* State Farm defended each action independently, requiring Class Counsel to effectively prosecute and manage different cases. *Id.*

Moreover, in undertaking such a substantial commitment on behalf of the Settlement Class, Class Counsel assumed significant risk because the claims were difficult and complex. The difficulty of the claims is reflected in the divergent outcomes in the litigation: one court dismissed the lawsuit at the summary judgment stage, and the other had not yet reached the merits. *See* Part II-A-6, *supra*. Indeed, no case resolved the core issue of how to interpret this Policy's language. Jt. Decl., ¶ 24. Likewise, damages presented hotly contested issues under *Daubert*, and there was a broad array of subject areas on which expert testimony was proffered. *Id.*, ¶¶ 12-14, 25. And, Class Counsel took a serious risk that class certification would be denied or that the previously certified litigation class in the *Millwood* Action would later be decertified. *Id.* at ¶ 25.

As set forth above, discovery in the litigation was intense. *See* Part II-A, *supra*. And even when Class Counsel achieved a successful result, such as a favorable class certification ruling, it had to fend off State Farm's petition for interlocutory review of the class-certification decision. *See* Jt. Decl., ¶ 18. Moreover, although Class Counsel expended more than 9,400 hours on the

litigation, Class Counsel was nonetheless efficient. *See id.*, ¶ 29. Class Counsel retained a single testifying expert, Larry Stern, across both cases, and they opted not to depose or *Daubert* all of State Farm’s experts. *See id.*, ¶¶ 14-16.

Despite the work required, Class Counsel did not waver in their efforts on behalf of the Settlement Class. Class Counsel pushed State Farm for the best possible settlement. During settlement negotiations, State Farm’s motion for summary judgment and Rule 702 motion to exclude the Plaintiff’s expert in the *Millwood* Action remained under advisement. *See id.*, ¶ 26. Nevertheless, Class Counsel with the assistance of the Hon. Layn Phillips—who is widely regarded as one of the most respected mediators in the country—were able to reach a resolution shortly after the mediation. *Id.*

C. The Litigation Itself Proves the Risk to Class Counsel in Representing the Settlement Class on a Contingent-Fee Basis.

Risk is an especially salient factor in assessing a fee request. Klonoff Decl., ¶ 40. Class Counsel’s extraordinary investment of labor and expenses necessarily hampered their ability to take on significant other work. Jt. Decl., ¶ 35. The four years of sustained litigation has already required more than 9,400 hours of work. *Id.*, ¶ 27. That was time spent and invested on behalf of the Settlement Class that could have been spent on less risky cases, where liability or damages were more certain, or where the claims had been advanced by a government investigation or public admissions—none of which was present here. Jt. Decl., ¶ 27; *see also* Klonoff Decl., ¶¶ 58-59, 61 (discussing cases that involved government investigations or public admissions of liability).

Indeed, the potential disagreement among jurists over the central issue of Policy interpretation places a clear emphasis on the risks to Class Counsel here. On State Farm’s successor policy form with similar language—the 94030—some courts issued policy interpretation rulings supportive of the policyholders. *See, e.g., Vogt v. State Farm Life Ins. Co.*, No. 2:16-CV-04170-

NKL, 2018 WL 1747336, at *4 (W.D. Mo. Apr. 10, 2018), *aff'd*, 963 F.3d 753 (8th Cir. 2020); *McClure v. State Farm Life Ins. Co.*, 608 F. Supp. 3d 813, 826 (D. Ariz. 2022). But other courts disagreed, finding in favor of State Farm. *See, e.g., Bally v. State Farm Life Ins. Co.*, 536 F. Supp. 3d 495, 508 (N.D. Cal. 2021); *Whitman v. State Farm Ins. Co.*, No. 3:19-CV-06025-BJR, 2022 WL 4081916, at *6 (W.D. Wash. Sept. 6, 2022). These disparate rulings regarding similar policy language underscore the risk of an adverse policy interpretation ruling.

For example, in *Bally*, the court agreed with the district court's interpretation in *Vogt* and denied State Farm's first summary judgment motion. After the Eighth Circuit ruling, however, it paradoxically adopted State Farm's argument that the phrase "applicable rate class" was broad enough to permit State Farm to include non-mortality factors like profits and expenses in setting its COI Rates and granted State Farm summary judgment on the COI Charge claim (although the court denied State Farm's motion as to the Expense Charge claim).⁴ Importantly, the *Bally* court did not view its ruling as inconsistent with the *Vogt* interpretation, concluding that "[n]either the district court nor the Eighth Circuit in *Vogt* meaningfully considered the meaning of the phrase" applicable rate class, which left in play the risk that subsequent courts would broadly adopt the *Bally* interpretation. *Bally*, 536 F. Supp. 3d at 504. The *Whitman* court agreed with *Bally* and adopted the same adverse interpretation. *See Whitman*, 2022 WL 4081916, at *4, *7 (agreeing with *Bally* and going further to grant State Farm summary judgment on the Expense Charge and all other claims).⁵

⁴ The court also granted summary judgment in favor of State Farm on Bally's conversion claim.

⁵ The *Whitman* court also held that "even if the Policy requires the COI to be limited to age, sex, and applicable rate class [as *Vogt* held] the rate classes themselves are based on non-mortality factors," permitting State Farm's deductions. *Whitman*, 2022 WL 4081916, at *4 n.5.

Moreover, Policy interpretation was far from the only risk that Class Counsel faced. State Farm levied every conceivable challenge to class certification, expert testimony, the merits, and damages. As to class certification, State Farm argued, *inter alia*, that Plaintiffs' expert, Mr. Stern, had not put forward a reliable methodology. While no court resolved this issue, the fact that the court in the *Millwood* Action took State Farm's *Daubert* challenge of Mr. Stern under advisement even after certifying the litigation class, injected some level of uncertainty regarding Plaintiffs' claims. Jt. Decl., ¶ 18.

Additionally, much of the alleged damages in each case occurred outside the nominal limitations period, requiring application of a tolling or delayed accrual rule. On this issue, the only court that addressed it, ruled against the policyholders. *See McClanahan v. State Farm Life Ins. Co.*, 660 F. Supp. 3d 728, 744 (W.D. Tenn. Mar. 9, 2023), *reconsideration denied*, No. 1:22-cv-1031-STA-JAY, 2023 WL 3587556 (W.D. Tenn. May 22, 2023). And, the court in the *Millwood* Action was considering statute of limitations challenges under advisement after the parties submitted supplemental briefing when the parties announced their settlement. Jt. Decl., ¶ 28.

In short, the record confirms that these cases were challenging and risky with complex legal and factual issues but were prosecuted skillfully over the course of several years in multiple jurisdictions without assistance from any official investigation.

III. LEGAL STANDARDS

A. Attorney's Fees

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h) "Under the 'common fund' doctrine" the law authorizes the Court to award "attorneys' fees from the settlement proceeds." *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 WL 3859763, at *2

(W.D. Mo. Aug. 16, 2019) (citing Fed. R. Civ. P. 23(h)); accord *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); see also Klonoff Decl., ¶ 36 (citing cases).

Courts typically use the “percentage-of-the-fund method” to award attorney’s fees from a common fund. See, e.g., *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019). Indeed, in the Eighth Circuit, “use of a percentage method of awarding attorney fees in a common-fund case is not only approved, but also ‘well established,’” *Rogowski v. State Farm Life Ins. Co.*, No. 4:22-cv-00203-RK, 2023 WL 5125113, at *1-6 (W.D. Mo. Apr. 18, 2023) (quoting *In re Xcel Energy, Inc., Securities, Derivative & “ERISA” Litig.*, 364 F. Supp. 2d 980, 991 (D. Minn. 2005) (quoting *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999))), or even “preferable,” *Barfield v. Sho-Me Power Elec. Co-op.*, No. 2:11-cv-4321-NKL, 2015 WL 3460346, at *3 (W.D. Mo. June 1, 2015) (quoting *West v. PSS World Med., Inc.*, No. 4:13 CV 574 CDP, 2014 WL 1648741, at *1 (E.D. Mo. Apr. 24, 2014)). The percentage method aligns the interests of the attorneys and the class members by incentivizing counsel to maximize the class’s recovery. See *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 245 (8th Cir. 1996) (“[T]he Task Force [established by the Third Circuit] recommended that the percentage of the benefit method be employed in common fund situations.”) (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237, 255 (3rd Cir. 1985));⁶ see also Klonoff Decl., ¶ 36. The Court may therefore properly use the percentage approach to award fees in this case.

⁶ In contrast, undue focus on hours or hourly rates “creates an unanticipated disincentive to early settlements, tempts lawyers to run up their hours, and compels district courts to engage in a gimlet-eyed review of line-item fee audits.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (cleaned up). While “a percentage approach may raise some potential concerns when a class settlement involves a reversionary fund . . . and the claims process is a complicated one,” the “proposed settlement [here] does not create” those concerns because nothing will revert to State Farm and there is no claim filing required. Cf. Klonoff Decl., ¶ 37.

B. Expenses

It is commonly recognized that class counsel should have the expenses they incurred to litigate a case reimbursed from the common fund they created. As a leading treatise states:

An attorney who creates or preserves a common fund by judgment or settlement for the benefit of a class is entitled to receive reimbursement of reasonable fees and expenses involved. The equitable principle that all reasonable expenses incurred in the creation of a fund for the benefit of a class are reimbursable proportionately by those who accept benefits from the fund authorizes reimbursement of full reasonable litigation expenses as costs of the suit in contrast to the more narrowly defined rules of taxable costs of suit under Fed. R Civ. P. 54(d). . . . The prevailing view is that expenses are awarded in addition to the fee percentage.

Alba Conte, 1 Attorney Fee Awards § 2:19 (3d ed.); *see also Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 166-67 (1939) (recognizing a federal court's equity power to award costs from a common fund). "Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit by the settlement." *Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1067 (D. Minn. 2010) (quoting *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996)). The Court may therefore properly reimburse Class Counsel for expenses they incurred in litigating these actions out of the Settlement Fund.

C. Service Awards

Courts routinely approve service awards to compensate class representatives for the services they provide and the risks they incur on behalf of the class. The factors for deciding whether the service awards are warranted are: "(1) actions the plaintiffs took to protect the class's interests, (2) the degree to which the class has benefited from those actions, and (3) the amount of time and effort the plaintiffs expended in pursuing litigation." *Caligiuri v. Symantec Corp.*, 855

F.3d 860, 867 (8th Cir. 2017). The Court, applying these factors, should award the Class Representatives the requested service awards.

IV. ARGUMENT

A. Attorney's Fees Equal to 33⅓ Percent of the Settlement Fund are Reasonable Under the Applicable Factors.

Pursuant to applicable law, Class Counsel are entitled to a reasonable attorney's fee for their work representing the Settlement Class and achieving this \$65 million Settlement. Upon analysis of the applicable factors endorsed in this Circuit, a fee equal to one-third of the Settlement Fund is appropriate and reasonable and should therefore be approved.

Selecting a reasonable percentage depends on “considering relevant factors from the twelve factors listed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 719-20 (5th Cir. 1974).” *In re Target Corp. Customer Data Sec. Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018) (cleaned up). The following are the *Johnson* factors:

(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

In re Target, 892 F.3d at 977 n.7. To be sure, “[m]any of the *Johnson* factors are related to one another and lend themselves to being analyzed in tandem.” *Swinton v. SquareTrade, Inc.*, 454 F. Supp. 3d 848, 886 (S.D. Iowa 2020). Therefore, courts in the Eighth Circuit often focus on the most relevant *Johnson* factors in evaluating fee requests. *See In re Xcel*, 364 F. Supp. 2d at 993; *Tussey*, 2019 WL 3859763, at *2; *Yarrington*, 697 F. Supp. 2d at 1062; *see also Hardman v. Bd.*

Of Educ. of Dollarway, Ark. Sch. Dist., 714 F.2d 823, 825 (8th Cir. 1983) (per curiam).⁷ These are discussed in more detail below.

Class Counsel’s request for a fee equal to one-third of the amount they successfully recovered for the Class is a reasonable portion of the fund. “Substantial empirical evidence indicates that a one-third fee is a common benchmark in private contingency fee cases.” Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: an Empirical Study*, 1 *J. of Empirical Legal Studies* 27, 35 (2004); *Shaw v. Interthinx, Inc.*, No. 13-cv-01229-REB-NYW, 2015 WL 1867861, at *6 (D. Colo. Apr. 22, 2015) (citations omitted) (alterations in original) (“[C]ourts have similarly recognized that ‘[t]he percentages awarded in common fund cases typically range from 20 to 50 percent of the common fund created[,]’ . . . and that fees within this range are ‘presumptively reasonable.’”). Courts in this Circuit and this District have frequently awarded attorney fees of 33½-36 percent of a common fund.⁸ See *Jones v. Monsanto Co.*, No. 19-

⁷ The nature of the attorney-client relationship does not apply and thus can be disregarded or treated as neutral in considering the fee.

⁸ See, e.g., *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (36% fee award reasonable); *Wiles v. Sw. Bell Tel. Co.*, No. 09-4236-CV-C-NKL, 2011 WL 2416291, at *4-5 (W.D. Mo. June 9, 2011) (awarding attorneys one-third of \$900,000 common fund); *Vogt v. State Farm Life Ins. Co.*, No. 2:16-CV-04170-NKL, 2021 WL 247958, at *2 (W.D. Mo. Jan. 25, 2021) (noting that “‘courts in this Circuit and this District have frequently awarded attorney fees of 33½ - 36% of a common fund’” and awarding one-third of the fund in that case) (quoting *Tussey*, 2019 WL 3859763, at *2); *Rogowski*, 2023 WL 5125113, at *5 (approving an attorneys’ fee award of one-third of a \$325,000,000 settlement fund); *Barfield*, 2015 WL 3460346, at *4 (one-third fee and expense award from \$6,500,000 fund is reasonable); *Yarrington*, 697 F. Supp. 2d at 1061-62, 1067 (awarding one-third of \$16 million settlement fund, plus separate reimbursement from the fund of \$245,000 in expenses); *Bishop v. Delaval Inc.*, No. 5:19-cv-06129-SRB, 2022 WL 18542465, at *2 (W.D. Mo. June 7, 2022) (approving one-third of \$55 million fund); *PHT Holding II LLC v. N. Am. Co. for Life & Health Ins.*, No. 4:18-cv-00368-SMR-HCA, 2023 WL 8522980, at *7 (S.D. Iowa Nov. 30, 2023) (awarding one-third of \$59 million settlement fund); *Kruger v. Lely N. Am., Inc.*, No. 0:20-cv-00629-KMM/DTS, 2023 WL 5665215, at *1, *5 (D. Minn. Sept. 1, 2023) (awarding one-third of \$64 million settlement); *Carlson v. C.H. Robinson Worldwide, Inc.*, No. CIV 02-3780 JNE/JJG, 2006 WL 2671105, at *8 (D. Minn. Sept. 18, 2006) (35.5% fee

0102-CV-W-BP, 2021 WL 2426126, at *9 (W.D. Mo. May 13, 2021), *aff'd*, 38 F.4th 693 (8th Cir. 2022) (citing *Vogt* for proposition that “fees in the range of 33.3% and 36% are common”). “[I]ndeed that figure is often higher for complex cases.” *In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *5 (D. Kan. July 29, 2016). Unquestionably, with high-risk and high-cost cases such as this, contingency fee arrangements are the “key to the courthouse” for individuals taking on a large corporation. Therefore, Class Counsel’s request for one-third of the common fund as a fee is directly proportional to the amount recovered for the Settlement Class and is a percentage routinely deemed reasonable and awarded in common fund cases.

1. The amount involved and results obtained for the Settlement Class given the risks of the litigation support the percentage requested. (Factor 8)

In common fund cases, the size of the fund itself reflects “the measure of success and represents the benchmark from which a reasonable fee will be awarded.” *Manual For Complex*

award reasonable); *In re E. W. Blanch Holdings, Inc. Sec. Litig.*, No. 01-258 (JNE/JGL), 2003 WL 23335319, at *3 (D. Minn. June 16, 2003) (awarding 33.3% of a \$20 million settlement); Order & Judgment at 2-3, *KK Motors v. Brunswick Corp.*, No. 98-2307 (D. Minn. March 6, 2000) (Dkt. 67) (awarding one-third of a \$30 million settlement); *In re Airline Ticket Comm’n Antitrust Litig.*, 953 F. Supp. 280, 285-86 (D. Minn. 1997) (awarding 33.3% of \$86.9 million fund); *In re Iowa Ready-Mix Concrete Antitrust Litig.*, No. C 10-4038-MWB, 2011 WL 5547159, at *3-4 (N.D. Iowa Nov. 9, 2011) (awarding attorneys 36.04% of \$18.5 million common fund in fees, plus separate reimbursement from settlement fund of over \$900,000 in expenses); *West v. PSS World Med., Inc.*, No. 4:13 CV 574 CDP, 2014 WL 1648741, at *1 (E.D. Mo. Apr. 24, 2014) (33% fee award reasonable); *Ray v. Lundstrom*, Nos. 8:10CV199, 4:10CV3177, 8:10CV332, 2012 WL 5458425, at *4-5 (D. Neb. Nov. 8, 2012) (awarding one-third of \$3.1 million fund in fees, plus separate reimbursement from the settlement fund of \$77,900 in expenses); *Brehm v. Engle*, 2011 U.S. Dist. LEXIS 35127, at *6 (D. Neb. Mar. 30, 2011) (awarding one-third of \$340,000 settlement fund in fees, plus separate reimbursement from the fund of \$45,000 in expenses); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 571 (S.D. Iowa 2011) (awarding 33% of the settlement award in fees); *see also Xcel Energy*, 364 F. Supp. 2d at 998 (listing various settlements, including *In re Select Comfort Corp. Sec. Litig.*, 2003 U.S. Dist. LEXIS 26409 (D. Minn. Feb. 28, 2003) (awarding 33.3% of the \$5,750,000 settlement) and *In re Control Data Sec. Litig.*, No. 85-1341 (D. Minn. Sept. 23, 1994) (awarding 36.96% of \$8 million fund)); *Tussey*, 2019 WL 3859763, at *4 (awarding one-third of \$55 million fund).

Litigation 4th § 14:121 (2004) (cleaned up); *see also In re UnitedHealth Group Inc. PSLRA Litig.*, 643 F. Supp. 2d 1094, 1104 (D. Minn. 2009) (“In considering a fee award, the ‘most critical factor’ is ‘the degree of success obtained.’”) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)).

The requested fee represents one-third of the common fund. Here, the Settlement Fund is pure cash and non-reversionary; so, the \$65 million cash settlement, plus interest earned until its distribution, requires no further valuation. So, in requesting a fee as a percentage of the Fund, Class Counsel necessarily seek a fee proportionate to the degree of success obtained.

Furthermore, this factor supports a contingency percentage of one-third, particularly given the benefits achieved. Importantly, success—including “exceptional success”—is not measured solely by the maximum damages alleged but must be evaluated against any “unusually difficult or risky circumstances and the size of plaintiffs’ recovery.” *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1204-05 (S.D. Fla. 2006). Here, the request is supported by both the size of the recovery and the results obtained as compared to the risk of a lesser recovery at trial.

a. A \$65 million settlement is an exceptional result, particularly against a defendant like State Farm.

The \$65 million settlement is exceptional, especially considering State Farm’s “reputation for engaging in a vigorous defense” of its conduct. *Sos v. State Farm Mut. Auto. Ins. Co.*, No. 6:17-cv-890, 2021 WL 1185685, at *23 (M.D. Fla. Jan. 26, 2021), report and recommendation adopted in part, rejected in part, No. 6:17-cv-890, 2021 WL 1186811 (M.D. Fla. Mar. 19, 2021) (agreeing with that finding, *id.* at *7). State Farm lived up to its reputation here, as reflected by the two national defense firms and top lawyers at those firms representing State Farm throughout this litigation.

Achieving the Settlement required Class Counsel to prosecute two separate actions. One judge certified a class over State Farm’s objection, and another entered summary against the

plaintiff. When the settlement negotiations began, summary judgment was pending in the remaining action. *See* Part II-A-7, *supra*. Furthermore, Class Counsel were well-informed of State Farm’s dogged efforts in the Form 94030 litigation that spanned 10 jurisdictions and were thus prepared to engage in protracted litigation across multiple forums. *See Rogowski*, 2023 WL 5125113, at *3.

Achieving any significant settlement against such an entrenched, well-funded, and ably represented defendant is, therefore, an exceptional result by any measure.

b. The results are also exceptional after considering the likely trial outcomes, including the possibility of no recovery.

The results are also excellent relative to the potential trial outcomes. *Jt. Decl.*, ¶ 26; *see also Landrum v. Meadows Credit Union*, No. 08-441-CV-W-DW, 2012 WL 12957387, at *3 (W.D. Mo. Mar. 16, 2012) (awarding fee where the “results obtained for the Class were extraordinary and exceptional in light of the risks posed by the assertions of the Defendant to the Class Members’ claims.”); *Shaw*, 2015 WL 1867861, at *7 (in awarding fees, concluding settlement delivering portion of damages was an “excellent” result “in light of the numerous risks”).

The Settlement Fund represents an excellent recovery, even if less than full damages, considering the substantial risks on the issues of Policy interpretation. Moreover, proving and recovering the entire overcharge was highly uncertain because of the broad range of potential recoveries at trial. State Farm had four expert witnesses, including an economist who found zero damages and alternatively critiqued Mr. Stern’s damages model such that even if a jury awarded damages, the amount could have been greatly reduced. If Plaintiffs had gone to trial even with a favorable Policy interpretation, they could have recovered nothing or even just a modest amount more than the Settlement provides. And they still would have faced significant appellate risk on

key issues of class certification, Policy interpretation, and statute of limitations—where any adverse ruling could have eliminated their claims entirely. *See* Jt. Decl., ¶ 19.

2. **Class Counsel represented the Settlement Class, on a contingent basis, despite numerous and substantial risks, and performed extraordinary labor precluding other employment, even though the cases were undesirable to other lawyers. (Factors 1, 4, 6-7 and 10)**

“Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees.” *Yarrington*, 697 F. Supp. 2d at 1062 (quoting *In re Xcel*, 364 F. Supp. 2d at 994). “[T]he critical takeaway from the case law is that attorneys’ fee awards should bear a relationship to the degree of risk involved.” Klonoff Decl., ¶ 100 (citing Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: an Empirical Study*, 1 J. of Empirical Legal Studies 27, 38 (2004) (“Fees are . . . correlated with risk: the presence of high risk is associated with a higher fee, while low-risk cases generate lower fees. . . . [This] is widely accepted in the literature.”)). “Unless that risk is compensated with a commensurate award, no firm, no matter how large or well-financed, will have the incentive to consider pursuing a case such as this.” *Tussey*, 2019 WL 3859763, at *3. “Courts agree that a larger fee is appropriate in contingent matters where payment depends on the attorney’s success.” *Been v. O.K. Indus., Inc.*, No. CIV-02-285-RAW, 2011 WL 4478766, at *9 (E.D. Okla. Aug. 14, 2011), *report and recommendation adopted*, No. CIV-02-285-RAW, 2011 WL 4475291 (E.D. Okla. Sept. 26, 2011).⁹ And critically, “[t]he risks plaintiffs’ counsel faced must be assessed as they existed in the

⁹ *Accord, In re: Checking Account Overdraft Litig.*, No. 1:09-MD-02836-JLK, 2014 WL 11370115, at *17 (S.D. Fla. Jan. 6, 2014) (risk embodied by “contingency fee arrangement often justifies an increase in the award of attorney’s fees.”) (quoting *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1335 (S.D. Fla. 2001)); *see also id.* (“Public policy concerns – in particular, ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs holding small individual claims – support the requested fee here.”); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 8:10ML

morning of the action, not in light of the settlement ultimately achieved at the end of the day.” *In re Xcel*, 364 F. Supp. 2d at 994.

Here, Class Counsel’s time and labor invested were extraordinary and necessarily precluded other work. Jt. Decl., ¶¶ 34-35. Prosecuting these actions required 9,440.60 hours with an expectation of at least 1,888 hours more to come administering the Settlement. *Id.*, ¶¶ 29-30.¹⁰ Class Counsel uniquely bore all the risk of prosecuting the claims, including advancing nearly \$824,678.54 in out-of-pocket expenses (to date). *Id.*, ¶¶ 31-32. They did not tag along on a government investigation or widespread, public condemnation of State Farm’s practices. *Id.*, ¶ 27; *see also* Klonoff Decl., ¶¶ 58, 61-62. Nor did they have favorable appellate precedent to rely upon when this litigation started. *See* Jt. Decl., ¶ 2 (commencing litigation before the Eighth Circuit issued its decision in *Vogt v. State Farm Life Ins. Co.*). Class Counsel’s work, which precluded

02151 JVS (FMOx), 2013 WL 12327929, at *32 (C.D. Cal. July 24, 2013) (“It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for contingency cases. This ensures competent representation for plaintiffs who may not otherwise be able to afford it.”) (quoting *In re Wash. Pub. Power Supply Sys. Secs. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994)); *Barrera v. Nat’l Crane Corp.*, No. SA-10-CV-0196 NN, 2012 WL 242828, at *4 (W.D. Tex. Jan. 25, 2012) (“The legal profession accepts contingent fees that exceed the market value of the services if rendered on a non-contingent basis as a legitimate way of assuring competent representation for plaintiffs who cannot afford to pay on an hourly basis regardless of whether they win or lose”); *Allapattah Servs., Inc.*, 454 F. Supp. 2d at 1217 (“Class Counsel has risked millions of dollars in un-reimbursed attorneys’ time and additional millions in out-of-pocket costs. Unless that risk is compensated with a commensurate reward, few firms, no matter how large or well financed, will have any incentive to represent the small stake holders in class actions against corporate America, no matter how worthy the cause or wrongful the defendant’s conduct.”).

¹⁰ The anticipated hours are calculated based on an average of the time spent per-policy in two other nationwide COI settlements reached by Class Counsel. The time spent includes responding to class member questions about the settlement, supervising the administrator, making updates to the court, overseeing check reissuances and distribution of benefits to deceased class member’s estates and beneficiaries, and ensuring that the distribution runs smoothly. Jt. Decl., ¶ 29.

other less-risky employment, was the result of their extraordinary efforts undertaken without any guarantee of payment. *Id.*, ¶ 34.

Moreover, these cases were undesirable because of the high risk of nonrecovery. *See id.*, ¶ 19. Often cases involving large potential damages produce competing counsel offering to represent the class. That was not the case here. Further evidence of the high risk involved here is the fact that State Farm has taken other COI cases to trial (a rare occurrence for class actions). *See id.*, ¶ 2. And State Farm robustly defended the actions, successfully obtaining dismissal in one case and summary judgment was pending in the other. *Id.*, ¶ 18-19. Furthermore, the actions could not simply ride the successes (or failures) of the Form 94030 litigation, because, according to State Farm, the circumstances surrounding the two policy forms were materially different, including that State Farm reduced COI Rates multiple times for Form 86040 policies and priced the policy forms differently, such that COI Rates for Form 86040 were lower than Form 94030 policies. *Id.*, ¶ 3.

Also, this risk was disproportionately borne by small and mid-sized firms. This was truly a David versus Goliath scenario, and not an instance in which several national firms commensurate in size of the defense behemoths hired by State Farm shared the risk of non-payment. Class Counsel bore the entirety of the contingent risk in terms of uncompensated labor and out-of-pocket expenses. *Id.*, ¶¶ 34-35. Under these circumstances, there is hardly a better example of Class Counsel undertaking extreme risk to represent a class on a contingent basis. *See Caligiuri*, 855 F.3d at 866 (affirming fee award where lower court reasoned, in part, that “[p]laintiffs’ counsel, in taking this case on a contingent fee basis, was exposed to significant risk”); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-md-2800-TWT, 2020 WL 256132, at *33 (N.D. Ga. Mar. 17, 2020) (“This action was prosecuted on a contingent basis and thus a larger fee is justified.”).

3. The claims were novel and difficult to prosecute. (Factor 2)

As the district court in *Vogt* found regarding similar claims, the claims here certainly presented “some difficult and novel factual and legal issues, including with respect to interpretation of the Policy and the calculation of damages.” *Vogt*, 2021 WL 247958, at *2. As other courts have noted, such factors “created significant risk for Class Counsel.” *George v. Academy Mortg. Corp. (UT)*, 369 F. Supp. 3d 1356, 1378 (N.D. Ga. 2019). Other courts awarding 33⅓ percent of a fund have “relied heavily on the fact that it ‘was an extremely difficult and complex case . . . with significant disputed issues arising at [various stages of the litigation],’” including where “[l]iability on these claims was far from certain, and thus the case presented a great deal of risk” to class counsel. Klonoff Decl., ¶ 44 (quoting *In re: Urethane Antitrust Litig.*, 2016 WL 4060156, at *4, 5).

As noted, liability was continually challenged, and unfavorable decisions from other COI cases prosecuted against defendants other than State Farm did not bode well for policyholders. *Norem v. Lincoln Benefit Life Co.*, 737 F.3d 1145, 1150 (7th Cir. 2013); *Slam Dunk I, LLC v. Conn. Gen. Life Ins. Co.*, 853 F. App’x 451, 455 (11th Cir. 2021); *Maxon v. Sentry Life Ins. Co.*, 18-cv-254-jdp, 2019 WL 4540057, at *1 (W.D. Wis. Sep. 19, 2019); *West v. Wilco Life Ins. Co.*, No. 1:20-cv-2961-RLM-DLP, 2021 WL 5827019, at *7 (S.D. Ind. Dec. 8, 2021). The cases also presented difficult expert issues as evidenced by the *Daubert* challenges State Farm filed and the challenges filed by Plaintiffs. See *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 106 (E.D. Pa. 2013) (awarding 33⅓ percent of the settlement fund as attorneys’ fees in which court relied upon the fact that class counsel had litigated a number of hotly contested *Daubert* challenges); see also Klonoff Decl., ¶ 50 (discussing why *Daubert* motions “can warrant substantial fees”). As noted, State Farm itself disclosed four experts with different expertise, all of which heavily critiqued Plaintiffs’ liability theory and Mr. Stern’s damages methodology. Finally, class certification also presented

difficult legal issues. Even though Plaintiffs prevailed on class certification in one case prior to settlement, it was clear State Farm saw unsettled issues in the propriety of class certification that it intended to aggressively pursue on appeal. It sought interlocutory appellate review of class certification in that case and undoubtedly would have contested it on appeal.

4. Class Counsel's reputation and skillful resolution of the litigation supports the award. (Factors 3 and 9)

Courts often judge class counsel's skill against the "quality and vigor of opposing counsel." *In re Charter Commc'ns, Inc.*, MDL No. 1506 All Cases, No. 4:02-CV-1186 CAS, 2005 WL 4045741, at *17 (E.D. Mo. June 30, 2005) (citing *In re IBP, Inc. Sec. Litig.*, 328 F. Supp. 2d 1056, 1064 (D.S.D. 2004)). This case presented difficult and novel legal and factual questions on several fronts, and the "difficulty of the issues involved created significant risk for Class Counsel." *Lunsford v. Woodforest Nat'l Bank*, 2014 WL 12740375, at *13 (N.D. Ga. May 19, 2014). As set forth above, this case was highly contentious and involved complicated expert, class certification, and factual issues. *See* Part II-A, *supra*. Class Counsel had to develop evidence, arguments, and expert testimony to rebut these issues with no guarantee that the Court or jury would accept their arguments. For these reasons, the complexity of the legal and factual issues supports the requested fee award.

5. The Settlement Class's reaction is neutral at this stage.

As of this filing, only one generalized objection from a State Farm sales agent was received related to the requested attorney's fees. *See* Dkt. 23. Because the objection deadline is still open, Plaintiffs will respond to this objection and any others received, in their motion for final approval.

6. **The percentage requested is a customary fee for contingent litigation and supported by other awards under the facts and circumstances of this litigation. (Factors 5 and 12)**

The Rules of Professional Conduct require that any attorney’s fee, including a contingent one, be reasonable under many of the same factors as the *Johnson* factors. Mo. R. Prof. Conduct. 4-1.5. Nonetheless, “[c]ontingent fee arrangements of 33 percent or more are common.” Klonoff Decl., ¶ 77 (citing, among other authorities, Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47, DEPAUL L. REV. 267, 284-86 (1998) (noting that 33½ percent “is the “standard” contingency fee figure” and finding, in a study of Wisconsin attorneys, that “a contingency fee of 33% was by far the most common, accounting for 92% of those cases”)).

In class actions, the requested fee is in line with—or lower than—cases with similarly impressive results. In assessing this factor, Eighth Circuit courts look to similar fee awards in class actions within the Eighth Circuit generally, as well as to fee awards in similar litigation in other circuits. *See In re Xcel*, 364 F. Supp. 2d at 998.

In the Eighth Circuit, courts have “frequently awarded attorneys’ fees ranging up to 36% in class actions.” *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017).¹¹ Also, as noted, the requested fee here is consistent with the three most recent COI overcharge settlements (*Spegele*, *Larson*, and *Rogowski*) in which the courts awarded class counsel the 30 to 33 percent of the fund they requested. *Spegele v. USAA Life Ins. Co.*, No. 5:17-cv-967-OLG, 2021 WL 4935978, at *6

¹¹ *See, e.g., Caligiuri*, 855 F.3d at 865-66 (33.33% of \$60,000,000 common fund); *Custom Hair Designs by Sandy, LLC v. Cent. Payment Co.*, No. 8:17CV310, 2022 WL 3445763, at *5 (D. Neb. Aug. 17, 2022) (33.33% of \$84,000,000 common fund); *In re Airline Ticket Commission Antitrust Litig.*, 953 F. Supp. 280, 285-86 (D. Minn. 1997) (awarding 33.3% of \$86,892,000 common fund); *In re Monosodium Glutamate Antitrust Litig.*, No. Civ. 00MDL1328PAM, 2003 WL 297276, at *3 (D. Minn. Feb. 6, 2003) (30% of \$81,400,000); *In re Xcel*, 364 F. Supp. 2d at 999 (awarding 25% of \$80,000,000 common fund and noting “courts in this circuit and this district have frequently awarded attorney fees between twenty-five and thirty-six percent of a common fund in other class actions”).

(W.D. Tex. Aug. 26, 2021); *Larson v. John Hancock Life Ins. Co.*, 2018 WL 8016973, at *6 (Cal. Super. May. 8, 2018); *Rogowski*, 2023 WL 5125113, at *5. Importantly, here, the *Johnson* factors are in line with *Rogowski* and warrant a percentage modestly higher than *Spegele* and *Larson*, as those cases were litigated in a single forum, compared to these cases against State Farm, which required lawsuits in more than one jurisdiction, necessarily entailing more work and risk. Likewise, in *Vogt*, the district court awarded one-third of the judgment on similar claims, relying on many of the same *Johnson* factors applicable here. *Vogt*, 2021 WL 247958, at *1-3, *aff'd*, 19 F.4th 1071 (8th Cir. 2021). This precedent supports the percentage requested here.

B. The Requested Fee Is Reasonable Under a Lodestar Crosscheck.

Although a lodestar crosscheck is “not required” in the Eighth Circuit, *Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017)—and, as explained above should be *disfavored* (*supra* note 6)—doing so here confirms that the requested fee is reasonable and should be approved. As noted above, Class Counsel have spent over 9,440.60 hours litigating these actions, and they conservatively anticipate spending at least 1,888 additional hours if the Settlement is approved. Jt. Decl., ¶ 29.¹² These hours result in an overall lodestar of \$7,937,393.56 at current rates. *Id.*

The resulting multiplier on this lodestar would be 2.73 if the requested fee is approved. Although Eighth Circuit courts have made clear that the lodestar cross-check “does not trump the court’s primary reliance on the percentage of common fund method,” *In re Xcel*, 364 F. Supp. 2d

¹² It is appropriate to include reasonably anticipated future hours in conducting a lodestar crosscheck. See *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*, MDL No. 2672 CRB, 2017 WL 1047834, at *5 (N.D. Cal. Mar 17, 2017) (calculating over 20,000 hours for future reasonably anticipated work in conducting lodestar crosscheck); *Tennille v. W. Union Co.*, No. 09-cv-00938-MSK-KMT, 2013 WL 6920449, at *3 (D. Colo. Dec. 31, 2013) (instructing plaintiffs to include in their lodestar calculation “an estimate of the future hours that will be necessary to carry the case to completion under the Settlement Agreement”); *Reyes v. Bakery & Confectionery Union*, 281 F. Supp. 3d 833, 853, 856-57 (N.D. Cal. 2017) (including estimated hours for “future work” related to, *inter alia*, “managing class members’ claims”).

at 999 (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 307 (3d Cir. 2005), *as amended* (Feb. 25, 2005) and *Petrovic*, 200 F.3d at 1157), that multiplier is reasonable, especially in light of the significant risks outlined above.¹³ See Klonoff Decl., ¶¶ 123, 126-27 (explaining lodestar multiplier and citing cases).¹⁴ Indeed, the *Rogowski* court approved a fee with a 5.75 multiplier. *Rogowski*, 2023 WL 5125113, at *5 n.8.

Specifically, the Eighth Circuit has held that a multiplier of 5.3 “does not exceed the bounds of reasonableness.” *Rawa*, 934 F.3d at 870 (quoting approvingly district court decision “finding reasonable a 5.61 cross-check multiplier”). Here, the multiplier “can be explained in large part by class counsel’s lean and efficient staffing of the case. Counsel could have ensured a higher lodestar (and thus a lower multiplier) by adding attorneys even when additional assistance was not essential or by duplicating work already performed in *Vogt* and the cases resulting in the *Rogowski* settlement. But they should be commended—not penalized—for taking a lean staffing approach.

¹³ Courts have “caution[ed] against setting fees in a ‘formulaic way.’” *In re Charter Commc’ns*, 2005 WL 4045741, at *22 (quoting *In re Rite Aid*, 396 F.3d at 301). “[T]o overly emphasize the amount of hours spent on a contingency fee case would penalize counsel for obtaining an early settlement and would distort the value of the attorneys’ services.” *Rawa*, 934 F.3d at 870 (quoting *In re Charter Commc’ns*, 2005 WL 4045741, at *18) (alteration in original). Although this was not an early settlement, it would make little sense to have incentivized Class Counsel—who utilized efficiency across the litigation—to take unnecessary depositions or load the case with additional attorneys, particularly given the outcome obtained with relative efficiency here.

¹⁴ Class Counsel have provided summaries of the time spent on these cases, *see* Jt. Decl., ¶ 30, which is generally considered sufficient for performing a lodestar crosscheck. *See In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 752-53 (quoting authority stating that the “lodestar cross-check calculation need entail neither mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records.”). And Class Counsel are prepared to submit their detailed billing entries *in camera* upon the Court’s request.

As the Eighth Circuit has cogently recognized, it would be unfair to “penalize counsel” for acting efficiently. *See Rawa*, 934 F.3d at 870.

Moreover, courts have awarded fees resulting in far larger multipliers in many other cases. *See Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1252 (Del. 2012) (66 multiplier); *In re Merry-Go-Round Enters. Inc.*, 244 B.R. 327, 335 (Bankr. D. Md. 2000) (19.6 multiplier); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. Civ. A. 03-4578, 2005 WL 1213926, at *16-18 (E.D. Pa. May 19, 2005) (15.6 multiplier); *In re Doral Fin. Corp. Sec. Litig.*, No. 1:05-cv-04014-RO, at ¶ 9(f) (S.D.N.Y. Jul. 20 17, 2007) (Dkt. 65) (10.26 multiplier); *Farrell v. Bank of Am. Corp.*, N.A., 827 F. App’x 628, 630 (9th Cir. 2020) (nearly 10 multiplier). And the multiplier here is below the top-end of a range in a case cited by the *Vogt* court approvingly as “collecting cases approving percentage-based fees that totaled between 1.47 and 6.85 of the lodestar amount.” *Vogt*, 2021 WL 247958, at *3 (citing *Hashw v. Dep’t Stores Nat’l Bank*, 182 F. Supp. 3d 935, 949-51 (D. Minn. 2016)). Thus, a lodestar crosscheck—if performed—does not undermine the fee requested here.

Given the high-level of risk, difficulty of the claims, complex nature of the multi-jurisdictional litigation a multiplier of 2.73 does not reflect a “windfall” or unearned contingent-fee award.

* * *

For these reasons, Class Counsel respectfully request that the Court award fees equal to one-third of the Settlement Fund.

C. The Court Should Approve Class Counsel’s Request for Reimbursement of Their Reasonably Incurred Litigation Expenses.

Although Class Counsel may seek up to \$1.1 million in actual expense reimbursement under the Settlement, as of the date of the preparation of this motion, Class Counsel has incurred

\$824,678.54 in reimbursable expenses (to date). Jt. Decl., ¶ 31. All of these expenses are properly reimbursed, and Class Counsel respectfully requests that the Court enter an order permitting Class Counsel to be reimbursed in this amount, as supplemented with any additional expenses prior to final approval.

The largest components of these costs are for experts, online legal research, and class notice and administration. *See Tussey*, 2019 WL 3859763, at *5 (“Reimbursable expenses include many litigation expenses beyond those narrowly defined ‘costs’ recoverable from an opposing party under Rule 54(d), and includes: expert fees; travel; long-distance and conference telephone; postage; delivery services; and computerized legal research.”) (citing *Alba Conte*, 1 Attorney Fee Awards § 2:19 (3d ed.)); *In re BankAmerica Corp. Sec. Litig.*, 228 F. Supp. 2d 1061, 1066 (E.D. Mo. 2002) (approving reimbursement to class counsel of: “expert witnesses; computerized research; court reporting services; travel expenses; copy, telephone and facsimile expenses; mediation; and class notification”); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004) (“The expenses incurred—which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review are the type for which the paying, arms’ length market reimburses attorneys. For this reason, they are properly chargeable to the Settlement fund.”); *Anwar v. Fairfield Greenwich Ltd.*, No. 09-CV-118 (VM), 2012 WL 1981505, at *3 (S.D.N.Y. June 1, 2012) (“Plaintiffs’ Counsel seek reimbursement for expenses such as mediation fees, expert witness fees, electronic legal research, photocopying, postage, and travel expenses, each of which is the type ‘the paying, arms’ length market’ reimburses attorneys.”). Accordingly, the Court should approve the requested reimbursement of expenses of \$824,678.54, as well as any additional actual expenses incurred prior to final approval.

D. The Court Should Approve the Requested Service Awards.

Here, the Class Representatives performed important work on the case, including helping to develop and review the factual allegations in each complaint and providing key guidance with respect to the Settlement, and for Buchanan and Millwood, their support also included sitting for depositions and answering discovery. *Jt. Decl.*, ¶ 36. That work materially advanced the litigation and protected the Settlement Class's interests. *Id.* Indeed, their time and effort made this Settlement possible.

The requested service awards of \$25,000 each are consistent with other awards approved in the Eighth Circuit. *See, e.g., Rogowski*, 2023 WL 5125113, at *6 (approving \$25,000 service awards); *see also Tussey*, 850 F.3d 951, 961 (8th Cir. 2017) (same). They are also consistent with, or lower than, awards in similarly sized settlements. *See, e.g., Klonoff Decl.*, ¶ 140 (citing cases, including where the funds were smaller than \$65 million yet the service awards for the class representatives were substantially higher).¹⁵

¹⁵ In *Vogt*, the district court approved a \$15,000 service award following trial. *Vogt*, 2021 WL 247958, at *5. In so ordering, the court concluded that the case was not particularly fact-intensive given that it granted summary judgment on liability prior to trial. *Id.* at *4. Respectfully, Class Counsel submits that this analysis undervalues two of the three factors relevant to determining the propriety of a service award: (1) actions the plaintiffs took to protect the class's interests, and (2) the degree to which the class has benefited from those actions. *Caligiuri*, 855 F.3d at 867. Here, without the Class Representatives, the interests of the class could not have been pursued. To file a case in a state, Class Counsel needed Plaintiffs who purchased Policies in that state. Each Class Representative added significant value in giving Class Counsel a new forum to litigate against State Farm on behalf of another state-wide putative class. And, the class benefited significantly from the efforts of these Plaintiffs, who responded to written discovery, produced documents, sat for depositions, placed the class's interest over their own in settlement negotiations, and approved the Settlement. In total, the \$150,000 in service awards requested represents a *de minimis* portion (only 0.2 percent) of each individual Settlement Class Member's recovery. No rational Settlement Class Member would have agreed to undertake the burdens of the Class Representative for such a *de minimis* cost to themselves. In this light, the modest awards are appropriate.

The Court should therefore approve the requested service awards of \$25,000 for each Class Representative.¹⁶

V. CONCLUSION

Accordingly, Class Counsel respectfully requests that the Court approve the requested fee of one-third of the Settlement Fund, reimbursement of current expenses in the amount of \$824,678.54 (subject to being updated before the final approval hearing), and service awards of \$25,000 to each of the Class Representatives.

¹⁶ The holding in *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244 (11th Cir. 2020), in which the Eleventh Circuit barred service awards in the context of claims brought under the federal Telephone Consumer Protection Act, is inapplicable to this case. First, the Eighth Circuit has held that service awards are permissible. *See Caligiuri*, 855 F.3d at 867; *see also Vogt*, 2021 WL 247958, at *3-4 (disagreeing with *Johnson* and observing “the Eighth Circuit has expressly recognized the value of incentive awards”) (citing *Tussey*, 850 F.3d at 962). Second, several Circuit Courts have explicitly rejected *NPAS*’s holding, as well as its underlying rationale. *See, e.g., In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 785-86 (9th Cir. 2022); *Moses v. N.Y. Times Co.* 79 F.4th 235, 253-56 (2d Cir. 2023); *Murray v. Grocery Delivery E-Servs. USA Inc.*, 55 F.4th 340, 352-53 (1st Cir. 2022). Finally, District Courts in the Eleventh Circuit have held that *NPAS* is inapplicable to diversity cases alleging violations of state law, as is the case here. *See, e.g., Arnold v. State Farm Fire & Cas. Co.*, No. 2:17-cv-148-TFM-C, 2023 WL 7308098, at *1 (S.D. Ala. Nov. 6, 2023); *Venerus v. Avis Budget Car Rental, LLC*, No. 6:13-cv-921-CEM-RMN, 2023 WL 4673481 (M.D. Fla. May 23, 2023); *Roth v. GEICO Gen. Ins. Co.*, No. 16-62942, 2020 WL 10818393, *3 (S.D. Fla. Oct. 8, 2020).

Date: January 19, 2023

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EXHIBIT 1: JOINT
DECLARATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

LORIN NIEWINSKI, JOHN BAKER)	
MCCLANAHAN as Personal Representative of)	
THE ESTATE OF MELISSA BUCHANAN,)	
ROBERT A. BOZAICH, RONNIE JACKSON,)	
and SHERIF B. BOTROS, Individually and on)	
Behalf of All Others Similarly Situated,)	
)	
Plaintiffs,)	Case No. 2:23-cv-04159-BP
)	
vs.)	
)	
STATE FARM LIFE INSURANCE)	
COMPANY and STATE FARM LIFE AND)	
ACCIDENT ASSURANCE COMPANY,)	
)	
Defendants.)	

**JOINT DECLARATION OF NORMAN E. SIEGEL, JOHN J. SCHIRGER,
NATHANIEL C. GIDDINGS, DAVID WILKERSON, AND SOPHIA GOLD**

We, Norman E. Siegel, John J. Schirger, Nathaniel C. Giddings, David Wilkerson, and Sophia Gold, declare as follows, pursuant to 28 U.S.C. § 1746:

1. We are partners with our respective law firms, and we are counsel of record for the Plaintiffs in the above-captioned action. We submit this declaration in support of Class Counsel’s Motion and Suggestions in Support of Motion for Attorney’s Fees, Costs, Expenses, and Service Awards. Each of us has personal knowledge of our own firm’s time and expenses, and if called upon, could and would, testify competently thereto. As to the remaining facts set forth herein, we each have personal knowledge of such, and if called upon, could and would testify competently thereto.

2. This is not the first cost of insurance (“COI”) case Class Counsel have litigated against State Farm. The first case was *Vogt v. State Farm*, which was brought on behalf of Missouri policyholders who owned universal life insurance policies issued on State Farm’s Form 94030. That case was litigated through trial and several appeals and resulted in State Farm paying a \$40 million judgment. The second round of litigation, which involved ten cases in different federal courts across the country, included owners of the Form 94030 policy outside of Missouri. After several years of highly contested litigation, the second phase of the litigation ultimately resulted in a \$325 million settlement in *Rogowski v. State Farm*.

3. This settlement involves resolution of a similar State Farm universal life policy known as Form 86040. While the policy language of Form 86040 is similar to Form 94030, the language is not identical, which increases the possibility courts may construe the policies differently. Moreover, State Farm insists that Form 94030 cases are materially different than Form 86040 litigation. For example, while State Farm claims it had no obligation to lower COI Rates for any of the policies, it lowered COI Rates for Form 86040 policies four times in 1987, 1990, 2002, and 2008 (compared to only once for Form 94030 policies), and as a result, policyholders could be found to be differently situated in terms of the COI Rates charged and how the rate reductions impacted them, if at all. State Farm also alleges it developed COI Rates differently for Form 86040 compared to Form 94030, and that COI Rates for Form 86040 are lower than Form 94030 policies. According to State Farm, this difference means that a sizable number of Form 86040 policyholders may not have suffered any damages.

4. As set forth in greater detail below, Class Counsel litigated two Form 86040 cases in different jurisdictions on behalf of Settlement Class Members. In one case, Class Counsel successfully obtained a certification ruling; in the other, however, the case was dismissed on statute

of limitations grounds but was quickly appealed. The culmination of these efforts is the present Settlement, which, if approved, will require State Farm to pay a non-reversionary sum of \$65 million to resolve the claims brought in the litigation.

5. On May 17, 2019, Class Representatives Gettys Bryant Millwood (“Millwood”) and John Baker McClanahan as Personal Representative of the Estate of Melissa Buchanan (“Buchanan”) filed their putative class action complaint against State Farm on behalf of themselves and similarly situated classes of Tennessee and South Carolina holders of State Farm universal life insurance policies (the “Policies”) who, Millwood and Buchanan alleged, had been forced to pay unlawful and excessive cost of insurance (“COI”) charges to State Farm. *See Compl., Millwood v. State Farm Life Ins. Co.*, No. 7:19-cv-01445 (D.S.C.) (Dkt. 1). This complaint alleged that State Farm breached the terms of its Policy because it (1) did not base its COI Rates on the insured’s “age, sex, and applicable rate class,” and (2) made adjustments to its COI Rates by including other undisclosed factors in its calculations rather than on “projected changes in mortality.” *Id.*

6. After years of discovery and briefing, as set forth in more detail below, Millwood and Buchanan’s claims were severed into two actions: one on behalf of South Carolina consumers (the “*Millwood* Action”), which stayed in the United States District Court for the District of South Carolina, and one on behalf of Tennessee consumers (the “*Buchanan* Action”), which was transferred to the United States District Court for the Western District of Tennessee. *See* Dkt. 161 in *McClanahan v. State Farm Life Ins. Co.*, No. 1:22-cv-01031 (W.D. Tenn.).

7. Shortly after filing the first lawsuit, Plaintiffs propounded and responded to substantial written discovery. Specifically, Plaintiffs propounded 21 interrogatories and 58 document requests. In response, State Farm produced more than 47,000 documents, spanning more than 425,000 pages to Plaintiffs. In addition, Plaintiffs responded to 40 interrogatories and 45

document requests propounded by State Farm on Plaintiffs. In total, Plaintiffs produced more than 200 documents, spanning nearly 3,200 pages to State Farm.

8. In furtherance of their discovery efforts, Class Counsel engaged in numerous meet and confers with State Farm's counsel and reviewed countless documents (both that had been received and that would be produced). The parties were not always able to reach an agreeable resolution of their discovery disputes. As a result, Class Counsel prepared and argued two motions to compel. Ultimately, Plaintiffs and State Farm were able to resolve these motions with the assistance of the Court.

9. In addition, Class Counsel pursued and received significant non-party discovery. Specifically, after State Farm designated six State Farm agents as potential witnesses in the case, Class Counsel promptly served Rule 45 subpoenas, which resulted in the production of more than 500 pages of documents from these non-parties.

10. Based on their review of the written discovery, Class Counsel deposed State Farm's 30(b)(6) designee, seven additional State Farm employees, and four State Farm agents. In addition, State Farm took the depositions of Plaintiffs Millwood and McClanahan, as well as Millwood's power of attorney, Jackie Adsit. Finally, State Farm deposed Plaintiffs' expert twice, and Class Counsel deposed three of State Farm's experts. Class Counsel prepared for and participated in each of these depositions. In total, more than 200 exhibits were introduced across these depositions.

11. A summary of the depositions taken in these actions is set forth in the below table:

Witness	Deposition Date	Affiliation	Exhibit Count
Witte, Joseph	2/26/2020	State Farm Employee	9
Streiley, Carl	4/30/2021	State Farm Employee	10
McClanahan, John Baker	5/27/2021	Plaintiff	9
Phipps, Tony	6/16/2021	State Farm Employee	8
Millwood, Gettys Bryant	6/18/2021	Plaintiff	16
Knackmuhs, Samantha	6/24/2021	State Farm Employee	22
Wieduwilt, Andy	7/1/2021	State Farm Employee	17
Holzbauer, Jeff	7/16/2021	State Farm Employee	15
Hendren, Rusty	7/21/2021	State Farm Employee	17
Bradey, Wanda	9/16/2021	State Farm Agent	9
Prestegaard, Amy	9/21/2021	State Farm Employee	12
Brooks, Sally	9/23/2021	State Farm Agent	6
McQueeney, Thomas	9/24/2021	State Farm Agent	5
Wilson, Michelle	9/29/2021	State Farm Agent	3
Stern, Larry	11/22/2021	Plaintiffs' Expert	4
Fair, Rebecca	12/16/2021	State Farm's Expert	5
Reynolds, Craig	12/21/2021	State Farm's Expert	3
Stiroh, Lauren	12/22/2021	State Farm's Expert	4
Stern, Larry	1/14/2022	Plaintiffs' Expert	8
Adsit, Jackie	3/16/2023	Plaintiff's Power of Attorney	20

12. State Farm relied on four putative experts, whose opinions covered distinct subject matters and were directed at both liability and damages, whereas Plaintiffs relied on a single expert, Larry Stern.

13. One of State Farm's experts was a former state insurance commissioner and executive at the National Association of Insurance Commissioners who opined that the Policy as interpreted by Plaintiffs could not have obtained approval for sale under state insurance regulatory standards. Another of State Farm's experts was a consumer-expectations expert who opined that prospective policyholders would have expected State Farm to include profit and expenses in its COI Charge. A third State Farm expert was an actuary who accused Mr. Stern of, among other things, failing to follow actuarial standards. And State Farm's fourth expert witness, an economist,

opined on, *inter alia*, alleged intraclass conflicts, the absence of any injury to any policyholder, and damages. Class Counsel developed individual strategies for responding to each expert.

14. As for Plaintiffs' expert, Mr. Stern analyzed a huge volume of data to produce a class-wide damages model. Class Counsel worked extensively with Mr. Stern, including engaging in numerous meet and confers with State Farm's counsel to understand State Farm's data, and its limitations, which was necessary for Mr. Stern to construct his model. Class Counsel's efforts were crucial to their representation of the Settlement Class.

15. In total, State Farm's experts submitted four reports, spanning more than 200 pages, which Class Counsel necessarily reviewed and analyzed. In addition, Class Counsel took the depositions of three of State Farm's experts, whereas State Farm took the deposition of Plaintiffs' expert twice. Class Counsel prepared for and participated in each of these expert depositions.

16. Ultimately, Plaintiffs and State Farm filed cross-*Daubert* motions. In total, the parties exchanged more than 250 pages of *Daubert* briefing, excluding exhibits. Although State Farm filed two *Daubert* motions against Mr. Stern, neither were granted as of the date of the Settlement. Mr. Stern's model stood up to extensive scrutiny.

17. In addition to the motions referenced above, Class Counsel also fully briefed class certification and cross-motions for summary judgment in the *Millwood* Action and the *Buchanan* Action. In total, Plaintiffs' class certification and summary judgment briefs, excluding exhibits, spanned more than 200 pages, whereas Defendants' class certification and summary judgment briefs, excluding exhibits, spanned more than 150 pages. In addition, the parties identified and submitted more than 150 exhibits in connection with the class certification and summary judgment briefs.

18. In September 2022, the court overseeing the *Millwood* Action certified the litigation class. The Fourth Circuit subsequently denied State Farm's 23(f) petition, and the case appeared to be headed full-speed toward trial. In April 2023, that same court denied the parties' cross-motions for summary judgment and Plaintiffs' *Daubert* motions but left State Farm's *Daubert* motion unresolved injecting some level of uncertainty regarding Plaintiffs' claims. Additionally, the court permitted supplemental briefing on the applicability of State Farm's statute of limitations defense.

19. At roughly the same time, in February 2023, the court overseeing the *Buchanan* Action granted State Farm's motion for summary judgment. Class Counsel subsequently filed a motion for reconsideration, which was denied, and Class Counsel subsequently filed a notice of appeal in June 2023.

20. Informed by the mixed rulings in the *Millwood* Action and the *Buchanan* Action, and with the benefit of the experience in the *Vogt* trial and appeals, and *Rogowski* settlement, Class Counsel and State Farm participated in a mediation overseen by Judge Layn Phillips (Ret.) in June 2023. While the parties were unable to reach a settlement during the mediation session, they were able to do so after with the continued assistance of Judge Phillips.

21. Consistent with the terms of the Settlement, on August 22, 2023, Class Counsel filed the present action, together with a motion for preliminary approval.

22. In prosecuting this litigation, Class Counsel litigated this matter purely on a contingent basis, fronting all necessary expenses. Novel and complex litigation, especially against such well-recognized defense counsel, takes extra skill and effort, and that was true here. This case fits that mold. Unlike most class actions, the *Millwood* Action and the *Buchanan* Action were litigated in separate forums, even though they involved common questions of fact. Prosecuting the

same set of facts in different jurisdictions, which potentially apply varying laws before different and independently minded judges, presents unique risks to Class Counsel and required exponentially more effort than a consolidated multi-state class action.

23. State Farm mounted a comprehensive and separate defense in each case, requiring an equally forceful prosecution by Class Counsel. Indeed, State Farm retained and was represented by two of the country's largest and most well-resourced defense firms during the litigation. Moreover, State Farm retained four experts to assist in its defense, as set forth above. In addition, State Farm defended each action independently, requiring Class Counsel to effectively prosecute and manage different cases.

24. In undertaking such a substantial commitment on behalf of the Settlement Class, Class Counsel assumed significant risk because the claims were difficult and complex. The difficulty of the claims is reflected in the various outcomes in the litigation: one court dismissed the lawsuit at the summary judgment stage, and the other had not yet reached the merits. Indeed, no case resolved the core issue of how to interpret this Policy's language. And, Class Counsel faced the prospect of filing additional cases in other states.

25. Likewise, Plaintiffs' expert's damages methodology and calculations were vigorously contested by State Farm. This presented a significant risk that the litigation class certified in the *Millwood* Action could have been decertified.

26. Despite the work required, Class Counsel did not waver in their efforts on behalf of the Settlement Class, and Class Counsel pushed State Farm for the best possible settlement. During settlement negotiations, State Farm's motion for summary judgment and Rule 702 motion to exclude the Plaintiff's expert in the *Millwood* Action remained under advisement. Nevertheless, Class Counsel with the assistance of the Hon. Layn Phillips—who is widely regarded as one of

the most respected mediators in the country—were able to reach a resolution shortly after the mediation. The settlement is excellent relative to the potential trial outcomes.

27. The four years of sustained litigation has already required more than 9,400 hours of work. This was time spent and invested on behalf of the Settlement Class that could have been spent on less risky cases, where liability or damages were more certain, or where the claims had been advanced by a government investigation or public admissions—none of which was present here.

28. Indeed, the potential disagreement among jurists over the central issue of Policy interpretation places a clear emphasis on the risks to Class Counsel here. Additionally, much of the alleged damages in each case occurred outside the nominal limitations period, requiring application of a tolling or delayed accrual rule. On this issue, the only court that addressed it (the *Buchanan* Action), ruled against the policyholders, and, the other court (the *Millwood* Action) was considering statute of limitations challenges under advisement after the parties submitted supplemental briefing when the parties announced their settlement.

29. To achieve this result for the Settlement Class, Class Counsel and their co-counsel, performed a massive amount of work—more than 9,400 hours—on a contingent basis, working for more than four years, yet doing so efficiently. Additionally, Class Counsel estimates they will spend approximately another 1,888 hours administering the Settlement, which does not include any time necessary to obtain final approval or potentially defend any judgment on appeal, but rather for responding to class member questions about the settlement, supervising the administrator, making updates to the court, overseeing check reissuances and distribution of benefits to deceased class member's estates and beneficiaries, and ensuring that the distribution runs smoothly. The 1,888 anticipated hours are calculated based on an average of the time spent

per-policy in two other nationwide COI settlements reached by Class Counsel. Class Counsel thus conservatively expects they will spend more than 11,300 hours representing the Settlement Class (\$7,937,393.56 in lodestar at current rates). Thus, the requested fee would result in a “multiplier” of only 2.73.

30. A summary of each timekeeper’s lodestar incurred in prosecuting this action, is set forth in the below table.¹ The below figures have been compiled from contemporaneous, daily time records regularly prepared and maintained by each law firm is set forth in the below table. Class Counsel attest that the rates charged by the lawyers and staff in their respective firms are reasonable, based on each person’s position, and experience level. Class Counsel further affirm that the rates submitted with this declaration are based on rate scales each Class Counsel has submitted and Courts have approved in other contingency cases. Moreover, based on Class Counsel’s collective experience and knowledge of the legal market, including the market for hiring lawyers engaged in complex litigation, the rates reflected in the below table are comparable to the rates charged by other law firms with similar experience, expertise, and reputation, for similar services in the nation’s leading legal markets. In addition, Class Counsel will update this data prior to final approval and will provide the underlying billing records to the Court for *in camera* review if requested to do so.

Timekeeper	Position	Law Firm	Total Hours	Current Rate	Lodestar (At Current Rate)
Boltax, Mandy	Associate	Hausfeld LLP	65.0	\$500.00	\$32,500.00
Coolidge, Melinda R.	Partner	Hausfeld LLP	584.2	\$920.00	\$537,464.00
Fetsick, Kimberly	Associate	Hausfeld LLP	1,246.5	\$560.00	\$698,040.00
Giddings, Nathaniel C.	Partner	Hausfeld LLP	1,576.8	\$860.00	\$1,356,048.00

¹ Mitchell DeClerck partner, Roger L. Ediger, has attested that Mitchell DeClerck’s reported time was compiled from contemporaneous daily time records regularly prepared and maintained by that firm, and that the reported time is true and accurate. Mr. Ediger’s declaration is available for the Court’s *in camera* inspection upon request.

Herman, Shana	Associate	Hausfeld LLP	52.0	\$480.00	\$24,960.00
McCracken, Cody	Law Clerk	Hausfeld LLP	32.5	\$260.00	\$8,450.00
McPhail, Suzanne	Paralegal	Hausfeld LLP	437.5	\$350.00	\$153,125.00
Rodriguez, Ramon	Paralegal	Hausfeld LLP	40.1	\$350.00	\$14,035.00
Trouillot, Sara	Senior Staff Attorney	Hausfeld LLP	474.1	\$460.00	\$218,086.00
Arrowood, Cynthan	Paralegal	Van Winkle Law Firm	3.0	\$200.00	\$600.00
Bryant, Rachel	Law Clerk	Van Winkle Law Firm	146.8	\$250.00	\$36,700.00
Holder, Sandy	Paralegal	Van Winkle Law Firm	155.4	\$200.00	\$31,080.00
O'Leary Smith, Marie Claire	Associate	Van Winkle Law Firm	15.7	\$400.00	\$6,280.00
Wilkerson, David	Partner	Van Winkle Law Firm	1,507.0	\$850.00	\$1,280,950.00
Casola, Brittany	Associate	Kaliel Gold PLLC	70.7	\$777.00	\$54,933.90
Garcia, Neva	Paralegal	Kaliel Gold PLLC	12.1	\$239.00	\$2,891.90
Gold, Sophia	Partner	Kaliel Gold PLLC	781.9	\$777.00	\$607,536.30
Kaliel, Jeff	Partner	Kaliel Gold PLLC	20.9	\$878.00	\$18,350.20
Muecke, Manfred	Associate	Kaliel Gold PLLC	312.3	\$777.00	\$242,657.10
Rosenberg, Amanda	Associate	Kaliel Gold PLLC	57.4	\$777.00	\$44,599.80
Ediger, Roger L.	Partner	Mitchell DeClerck	209.7	\$475.00	\$99,607.50
Hawk, Amy	Paralegal	Mitchell DeClerck	204.9	\$200.00	\$40,980.00
Hurt, Alice	Paralegal	Mitchell DeClerck	16.7	\$200.00	\$3,340.00
Lahman, Larry D.	Partner	Mitchell DeClerck	466.7	\$500.00	\$233,350.00
Hickey, David	Associate	Stueve Siegel Hanson LLP	15.0	\$825.00	\$12,375.00
Lange, Ethan	Partner	Stueve Siegel Hanson LLP	201.7	\$950.00	\$191,615.00
Marquart, Mary Rose	Paralegal	Stueve Siegel Hanson LLP	13.6	\$350.00	\$4,760.00
Perkins, Lindsay	Partner	Stueve Siegel Hanson LLP	5.9	\$975.00	\$5,752.50
Phommachanh, Vong	Paralegal	Stueve Siegel Hanson LLP	2.4	\$350.00	\$840.00

Siegel, Norman E.	Partner	Stueve Siegel Hanson LLP	182.1	\$1,325.00	\$241,282.50
Wilders, Bradley	Partner	Stueve Siegel Hanson LLP	3.7	\$1,125.00	\$4,162.50
Bess-Rhodes, Olivia	Law Clerk	Schirger Feierabend LLC	7.5	\$225.00	\$1,687.50
Duryea, Cara	Paralegal	Schirger Feierabend LLC	65.2	\$225.00	\$14,670.00
Feierabend, Joseph	Partner	Schirger Feierabend LLC	185.9	\$775.00	\$144,072.50
Lytle, Matthew	Partner	Schirger Feierabend LLC	27.3	\$775.00	\$21,157.50
Schirger, John J.	Partner	Schirger Feierabend LLC	236.6	\$950.00	\$224,770.00
Stainbrook, Molley	Paralegal	Schirger Feierabend LLC	3.8	\$225.00	\$855.00
Totals:			9,440.60	---	\$6,614,564.70

31. In addition, Class Counsel have collectively expended \$824,678.54 in litigating these cases, which have yet to be reimbursed. Some of these expenses were paid by each firm individually, while other costs were paid out of a joint litigation fund established and maintained by Class Counsel.

32. The below table categorizes the unreimbursed expenses incurred by Class Counsel and their co-counsel in litigating these cases.

Expense Category	Firm	Amount
Travel, Including Airfare, Hotel, Meals, Mileage, Parking, & Rental Cars	Hausfeld	\$11,552.52
	Van Winkle	\$4,644.46
	Kaliel Gold	\$0.00
	Mitchell DeClerk ²	\$1,310.43

² Mitchell DeClerck partner, Roger L. Ediger, has attested that Mitchell DeClerck's reported expenses were compiled from vouchers, receipts, check records, and/or other source material and are an accurate record of the expenses incurred in litigating these actions that have yet to be reimbursed. Mr. Ediger's declaration is available for the Court's *in camera* inspection upon request.

	Stueve Siegel	\$5,503.37
	Schirger Feierabend	\$2,807.82
	Litigation Fund	\$0.00
	Category Total	\$25,818.60
Printing & Copies	Hausfeld	\$2,634.52
	Van Winkle	\$1,345.80
	Kaliel Gold	\$0.00
	Mitchell DeClerk	\$0.00
	Stueve Siegel	\$50.20
	Schirger Feierabend	\$5.50
	Litigation Fund	\$53.75
	Category Total	\$4,089.77
Filing Fees & Court Costs, Including Pacer	Hausfeld	\$3,191.15
	Van Winkle	\$2,160.00
	Kaliel Gold	\$0.00
	Mitchell DeClerk	\$800.00
	Stueve Siegel	\$805.60
	Schirger Feierabend	\$0.00
	Litigation Fund	\$0.00
	Category Total	\$6,956.75
Postage & Couriers	Hausfeld	\$309.86
	Van Winkle	\$292.61
	Kaliel Gold	\$0.00
	Mitchell DeClerk	\$158.08
	Stueve Siegel	\$15.27
	Schirger Feierabend	\$19.97
	Litigation Fund	\$0.00
	Category Total	\$795.79
Professional Services, Including Experts & Mediator Fees	Hausfeld	\$0.00
	Van Winkle	\$0.00
	Kaliel Gold	\$0.00
	Mitchell DeClerk	\$0.00
	Stueve Siegel	\$7,945.00
	Schirger Feierabend	\$5,125.00
	Litigation Fund	\$590,356.50
	Category Total	\$603,426.50
Legal Research, Including Westlaw	Hausfeld	\$19,549.77
	Van Winkle	\$0.00
	Kaliel Gold	\$0.00
	Mitchell DeClerk	\$8,505.19
	Stueve Siegel	\$2,837.17
	Schirger Feierabend	\$510.46
	Litigation Fund	\$0.00
	Category Total	\$31,402.59
Transcripts, Including Depositions	Hausfeld	\$0.00
	Van Winkle	\$1,684.00
	Kaliel Gold	\$1,138.05
	Mitchell DeClerk	\$0.00
	Stueve Siegel	\$0.00

	Schirger Feierabend	\$0.00
	Litigation Fund	\$78,300.25
	Category Total	\$81,122.30
Telephone Charges	Hausfeld	\$235.64
	Van Winkle	\$0.00
	Kaliel Gold	\$0.00
	Mitchell DeClerk	\$0.00
	Stueve Siegel	\$0.00
	Schirger Feierabend	\$0.00
	Litigation Fund	\$0.00
	Category Total	\$235.64
Discovery Costs, Including Document Hosting	Hausfeld	\$0.00
	Van Winkle	\$0.00
	Kaliel Gold	\$0.00
	Mitchell DeClerk	\$0.00
	Stueve Siegel	\$0.00
	Schirger Feierabend	\$0.00
	Litigation Fund	\$70,734.57
	Category Total	\$70,734.57
Other, Including Supplies & Internet Access	Hausfeld	\$51.03
	Van Winkle	\$45.00
	Kaliel Gold	\$0.00
	Mitchell DeClerk	\$0.00
	Stueve Siegel	\$0.00
	Schirger Feierabend	\$0.00
	Litigation Fund	\$0.00
	Category Total	\$96.03
Total Unreimbursed Expenses:		\$824,678.54

33. These expenses were reasonable and necessary to the successful prosecution of this action. Due to the risk that they might never recover, Class Counsel endeavored to keep expenses to a minimum. Expense reports and invoices are available to the Court for *in camera* review upon request.

34. As discussed above, Class Counsel bore the risk of litigating these actions entirely on a contingent basis for the past four years. There are numerous examples where counsel in contingency fee cases have worked thousands of hours and advanced substantial sums of money, only to receive no compensation. From personal experience, Class Counsel are fully aware that

despite the most vigorous and competent of efforts, a law firm's success in contingent litigation on behalf of a class is never guaranteed.

35. Despite this, Class Counsel have ensured that sufficient attorney resources were dedicated to prosecuting the claims. They have also ensured sufficient funds were available to advance the expenses required to pursue and complete such complex litigation. Class Counsel's investment of this amount of hard costs demonstrates the commitment, as well as the risk, they were willing to take in prosecuting the case and protecting Class Members' claims. This extraordinary investment of labor and expenses necessarily hampered their ability to take on significant other work.

36. The five named Class Representatives along with Millwood were not only negatively impacted by State Farm's contractual breach, but also provided key support to the litigation, including helping to develop and review the factual allegations in each complaint and providing key guidance with respect to the Settlement. And for Buchanan and Millwood, their support also included sitting for depositions and answering discovery. This work materially advanced the litigation and protected the Settlement Class's interests.

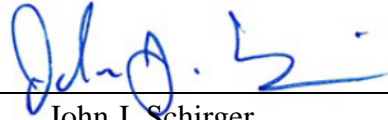
37. Based on the significant recovery for the Settlement Class and the substantial risks faced by Class Counsel, Class Counsel respectfully submits that the Court should award attorneys' fees of one-third of the Settlement Fund, approve reimbursement of \$824,678.54 in litigation expenses (to be updated prior to final approval), and a \$25,000 service award for each of the Class Representatives.

We, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the above is true and correct.

Executed this 19th day of January, 2024.



Norman E. Siegel



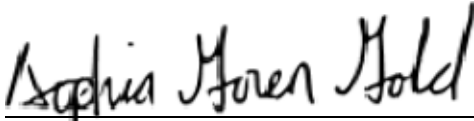
John J. Schirger



David Wilkerson



Nathaniel C. Giddings



Sophia Gold

EXHIBIT 2: KLONOFF

DECLARATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
MISSOURI CENTRAL DIVISION**

**DAVID M. ROGOWSKI, ELIZABETH A.
BALLY, KATHY BAUER, KIM BOTTE,
JOHN E. JAUNICH, MYLENE MCCLURE
as personal representative of THE ESTATE
OF EARL L. MCCLURE, RONALD K.
PAGE, CHANDRA B. SINGH, JOYCE
THOMAS, DAVID TOMS, and WILLIAM T.
WHITMAN, Individually and On Behalf Of
All Others Similarly Situated,**

Plaintiffs,

vs.

**STATE FARM LIFE INSURANCE
COMPANY and STATE FARM LIFE AND
ACCIDENT ASSURANCE COMPANY,**

Defendants.

Case No. 4:22-cv-00203-RK

**DECLARATION OF PROFESSOR ROBERT H. KLONOFF RELATING TO
ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

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APPENDIX A: Curriculum Vitae

ROBERT H. KLONOFF, under penalty of perjury, declares as follows:

I. INTRODUCTION

1. I have been asked by class counsel to opine on the reasonableness of: (1) their requested attorneys' fees; (2) their requested out-of-pocket costs; and (3) their proposed service awards to the class representatives. I offer my opinions for the Court's consideration based on my background and experience. Because the attorneys' fees sought here exceed \$108 million, I have tried to be especially thorough in my analysis. I recognize, of course, that my role is limited and that this Court will make the ultimate decision.

II. QUALIFICATIONS

2. I have served as an expert in numerous class action cases and have opined on attorneys' fees, costs, and service award issues in many of those cases. I am currently the Jordan D. Schnitzer Professor of Law at Lewis & Clark Law School and have held that position since June 1, 2014. This is an endowed, tenured position at the rank of full professor. From July 1, 2007, to May 31, 2014, I served as the Dean of Lewis & Clark Law School, and I was also a full professor at Lewis & Clark during that time. Immediately prior to assuming the deanship at Lewis & Clark, I served for four years as the Douglas Stripp/Missouri Professor of Law at the University of Missouri-Kansas City School of Law (UMKC). That appointment was an endowed, tenured position at the rank of full professor. Before joining the academy in a full-time capacity, I served for more than a dozen years as an attorney with the international law firm of Jones Day, working in the firm's Washington, D.C. office. I was an equity partner at the firm for most of that time. (I continued to work for Jones Day while I was employed at UMKC; my status with the firm during that period changed from partner to of counsel.). While working at Jones Day (before joining the

UMKC faculty), I also served for many years as an adjunct professor of law at Georgetown University Law Center. Before joining Jones Day, I served as an Assistant United States Attorney and as an Assistant to the Solicitor General of the United States. Immediately after graduating from law school, I served as a law clerk for Chief Judge John R. Brown of the U.S. Court of Appeals for the Fifth Circuit. I received my law degree from Yale Law School.

3. In my various academic positions, I have taught (among other subjects) complex litigation, class actions, civil procedure, federal courts, and federal appellate procedure. With respect to my scholarship, since 2022, I have been a co-author of the Wright & Miller treatise, *Federal Practice and Procedure*. I have sole responsibility for the three volumes of the treatise focusing on class actions (including attorneys' fees in class actions). In addition, I co-authored the first casebook devoted specifically to class actions, and I am now the sole author of that book: *Class Actions and Other Multi-Party Litigation: Cases and Materials* (West 4th ed. 2017). I am also the sole author of the Nutshell on class actions: *Class Actions and Other Multi-Party Litigation in a Nutshell* (West 6th ed. 2021), and the Nutshell on federal multidistrict litigation, *Federal Multidistrict Litigation in a Nutshell* (West 2020). These texts are used at law schools throughout the United States and have been cited by many courts and commentators.¹ I have also

¹ See, e.g., *Soileau v. Churchill Downs Louisiana Horseracing Co., L.L.C.*, 2021-0022 (La. App 4th Cir. 12/22/21), 2021 La. App. LEXIS 2022, at *83 (citing casebook); *Kolbe v. BAC Home Loans Servicing, LP*, 738 F.3d 432, 468 (1st Cir. 2013) (citing *Class Action Nutshell*); *Culver v. City of Milwaukee*, 277 F.3d 908, 913 (7th Cir. 2002) (citing *Class Action Nutshell*); *LaRocque ex rel. Spang v. TRS Recovery Servs., Inc.*, 285 F.R.D. 139, 151 (D. Me. 2012) (citing *Class Action Nutshell*); *Adams v. United Services Automobile Ass'n*, No. 2:14-CV-02013, 2016 WL 1465433, at *7 (W.D. Ark. Apr. 14, 2016) (citing *Class Action Nutshell*), *rev'd on other grounds*, 863 F.3d 1069 (8th Cir. 2017); Samir D. Parikh, *The New Mass Torts Bargain*, 91 FORDHAM L. REV. 447 (2022) (citing *Federal Multidistrict Litigation Nutshell*); Brian T. Fitzpatrick, *Many Minds, Many*

authored or co-authored numerous scholarly articles on class actions and other topics.² In October 2014, I was elected to membership in the International Association of Procedural Law (IAPL), an

MDL Judges, 84 LAW & CONTEMP. PROBS. 107 (2021) (citing *Federal Multidistrict Litigation Nutshell*); Judge Stephen R. Bough & Anne E. Case-Halferty, *A Judicial Perspective on Approaches to Mdl Settlement*, 89 UMKC L. REV. 971, 973-974 (2021) (citing *Federal Multidistrict Litigation Nutshell*); Libby Jelinek, *The Applicability of the Federal Rules of Evidence at Class Certification*, 65 UCLA L. REV. 280, 286 n.27, 291 n.65, 316 n.206 (2018) (citing casebook and *Class Action Nutshell*); Jaime Dodge, *Privatizing Mass Settlement*, 90 NOTRE DAME L. REV. 335, 337 n.12 (2014) (citing casebook); Vaughn R. Walker, *Class Actions Along the Path of Federal Rule Making*, 44 LOY. U. CHI. L.J. 445, 449 n. 17 (2012) (citing *Class Action Nutshell*); Richard A. Nagareda, *The Preexistence Principle and the Structure of the Class Action*, 103 COLUM. L. REV. 149, 151 n.5 (2003) (citing casebook); Kenneth S. Rivlin & Jamaica D. Potts, *Proposed Rule Changes to Federal Civil Procedure May Introduce New Challenges in Environmental Class Action Litigation*, 27 HARV. ENVTL. L. REV. 519, 521 n.10 (2003) (citing *Class Action Nutshell*).

² My articles have been frequently cited. For example, my 2013 article, *The Decline of Class Actions*, 90 WASH. U. L. REV. 729 (2013), has been cited dozens of times by courts and commentators. See, e.g., *In re Baby Boy Doe*, 975 N.W.2d 486, 491, (McCormack, C.J., concurring in part), *reconsideration denied*, 979 N.W.2d 324 (Mich. 2022), *cert. denied*, *Kruithoff v. Cath. Charities of W. Michigan*, 2022 WL 17408187 (U.S. Dec. 5, 2022); *Roland v. Annett Holdings, Inc.*, 940 N.W.2d 752, 769 (Iowa 2020); *Mielo v. Steak 'n Shake Operations, Inc.*, 897 F.3d 467, 484 & n.18 (3d Cir. 2018); *In re National Football League Players' Concussion Injury Litig.*, 775 F.3d 570, 576 (3d Cir. 2014); *Eubank v. Pella Corp.*, 753 F.3d 718, 719 (7th Cir. 2014) (Posner, J.); *In re Johnson*, 760 F.3d 66, 75 (D.C. Cir. 2014); *Shupe v. Rocket Companies, Inc.*, 2022 WL 1421493 at *3 (E.D. Mich. May 5, 2022); *McCreary v. Federal Bureau of Prisons*, 2020 U.S. Dist. LEXIS 15310, at *46 (M.D. Pa. Jan. 29, 2020); *Wendell H. Stone Co., Inc. v. PC Shield Inc.*, No. 18-cv-001135, 2018 WL 6065408, at *2 (W.D. Pa. Nov. 19, 2018); *In re Aetna UCR Litig.*, No. 07-cv-03541-KSH-CLW, 2018 U.S. Dist. LEXIS 111130, at *43 n.15 (D.N.J. June 30, 2018); *Dickens v. GC Services Limited Partnership*, 220 F. Supp. 3d 1312, 1324 (M.D. Fla. 2016), *vacated on other grounds*, 706 F. App'x 529 (11th Cir. 2017); *In re Kosmos Energy Ltd. Sec. Litig.*, No. 3:12-cv-373-B, 2014 WL 1095326, at *2 n.20 (N.D. Tex. Mar. 19, 2014); *LaRocque ex rel. Spang v. TRS Recovery Servs., Inc.*, 285 F.R.D. 139, 152 (D. Me. 2012); Christine P. Bartholomew, *Antitrust Class Actions in the Wake of Procedural Reform*, 97 Ind. L.J. 1315, 1317 (2022); Joshua P. Davis, *Of Robolawyers and Robojudges*, 73 Hastings L.J. 1173, 1191 (2022); Alix Valenti, *Class Actions Ten Years after Wal-Mart Stores, Inc. v. Dukes: Difficult but Not Impossible*, 24 ATL. L.J. 2 (2022); J. Maria Glover, *Mass Arbitration*, 74 STAN. L. REV. 1283 (2022); Andrew D. Bradt, et. al., *Dissonance and Distress in Bankruptcy and Mass Torts*, 91 FORDHAM L. REV. 309 (2022); R. Andrew Grindstaff, *Article III Standing, the Sword and the Shield: Resolving a Circuit Split in Favor of Data Breach Plaintiffs*, 29 WM. & MARY BILL RTS.

J. 851 (2021); Stephen B. Burbank & Sean Farhang, *Class Certification in the US Courts of Appeals: A Longitudinal Study*, 84 *Law & Contemp. Prob.* 73, 82 (2021); Samuel Issacharoff, *Rule 23 and the Triumph of Experience*, 84 *Law & Contemp. Prob.* 161, 172 (2021); Abbe R. Gluck & Elizabeth Chamblee Burch, *MDL Revolution*, 96 *N.Y.U. L. Rev.* 1, 60 (2021); Jason Iuliano, *The Student Loan Bankruptcy Gap*, 70 *Duke L.J.* 497, 538 (2020); Elysa M. Dishman, *Class Action Squared: Multistate Actions and Agency Dilemmas*, 96 *Notre Dame L. Rev.* 291, 311 (2020); Angela P. Harris & Aysha Pamukcu, *The Civil Rights of Health: A New Approach to Challenging Structural Inequality*, 67 *UCLA L. Rev.* 758, 800 (2020); Sunita Patel, *Jumping Hurdles to Sue the Police*, 104 *Minn. L. Rev.* 2257, 2262 (2020); Anne E. Ralph, *The Story of A Class: Uses of Narrative in Public Interest Class Actions Before Certification*, 95 *Wash. L. Rev.* 259, 278-79 (2020); Colin Crawford, *Access to Justice for Collective and Diffuse Rights: Theoretical Challenges and Opportunities for Social Contract Theory*, 27 *Ind. J. Global Legal Stud.* 59, 79 (2020); D. Brooks Smith, *Class Action and Aggregate Litigation: A Comparative International Analysis*, 124 *Penn St. L. Rev.* 303, 326-27 (2020); Daniel Wilf-Townsend, *Did Bristol-Myers Squibb Kill the Nationwide Class Action?*, 129 *Yale L.J. Forum* 205, 206 (2019); Pamela K. Bookman, *The Arbitration–Litigation Paradox*, 72 *VAND. L. REV.* 1119, 1143 n.146 (2019); David C. Miller, *Abuse of Discretion and the Sliding Scale of Difference: Restoring the Balance of Power Between Circuit Courts and District Courts for Rule 23 Class Certification Decisions in Oil and Gas Royalty Litigation*, 103 *IOWA L. REV.* 1811 *passim* (2018); Libby Jelinek, *The Applicability of the Federal Rules of Evidence at Class Certification*, 65 *UCLA L. REV.* 280, 297 n.101 (2018); Andrew D. Bradt & D. Theodore Rave, *Aggregation on Defendants’ Terms: Bristol-Myers Squibb and the Federalization of Mass Tort Litigation*, 59 *B.C. L. REV.* 1251, 1261 n.39, 1266 n.78, 1286 n.196 (2018); Joseph A. Seiner, *Tailoring Class Actions to the On-Demand Economy*, 78 *OHIO ST. L.J.* 21, 25 n.14, 32 n.54 (2017); Brian T. Fitzpatrick, *Justice Scalia and Class Actions: A Loving Critique*, 92 *NOTRE DAME L. REV.* 1977, 1979 (2017); Deborah R. Hensler, *From Sea to Shining Sea: How and Why Class Actions Are Spreading Globally*, 65 *KAN. L. REV.* 965, 965 n.2 (2017); Richard Marcus, *Bending in the Breeze: American Class Actions in the Twenty-First Century*, 65 *DEPAUL L. REV.* 497, 497 & n.2 (2016); Maureen Carroll, *Class Action Myopia*, 65 *DUKE L.J.* 843, 846 n.8, 876–78 & nn.181, 183 & 190–93, 881 nn.211 & 213, 883 n.225 (2016); Claire E. Bourque, Note, *Liability Only, Please—Hold the Damages: The Supreme Court’s New Order for Class Certification*, 22 *GEO. MASON L. REV.* 695, 698 n.29 (2015); Martin H. Redish & Julie M. Karaba, *One Size Doesn’t Fit All: Multidistrict Litigation, Due Process, and the Dangers of Procedural Collectivism*, 95 *B.U. L. REV.* 109, 110 n.2 (2015); Robert G. Bone, *The Misguided Search For Class Unity*, 82 *GEO. WASH. L. REV.* 651, 654 n.6 (2014); David Freeman Engstrom, *Private Enforcement’s Pathways: Lessons From Qui Tam Litigation*, 114 *COLUM. L. REV.* 1913, 1920 n.17 (2014); Howard M. Erichson, *The Problem of Settlement Class Actions*, 82 *WASH. U. L. REV.* 951, 956 n.20 (2014); Arthur R. Miller, Keynote Address, *The Preservation and Rejuvenation of Aggregate Litigation: A Systemic Imperative*, 64 *EMORY L.J.* 293, 294 n.7 (2014); Linda S. Mullenix, *Ending Class Actions As We Know Them: Rethinking the American Class Action*, 64 *EMORY L.J.* 399, 403 n.14 (2014); Stephen R. Subrin & Thomas O. Main, *The Fourth Era of American Civil Procedure*, 162 *U. PA. L. REV.* 1839, 1853 n.80 (2014); Erin L. Geller, *The Fail-Safe Class as an Independent Bar to Class Certification*, 81 *FORDHAM L. REV.* 2769, 2775 n. 38

organization of preeminent civil procedure scholars from around the world. I was selected in a competitive process to present a scholarly article on class actions at the May 2015 Congress of the IAPL, an event held once every four years.

4. In September 2011, the Chief Justice of the United States appointed me to serve a three-year term as the academic voting member of the Judicial Conference Advisory Committee on Rules of Civil Procedure (“Advisory Committee”). The Advisory Committee considers and recommends amendments to the Federal Rules of Civil Procedure. Only one professor in the United States is selected by the Chief Justice to serve in that role during any three-year term. In May 2014, the Chief Justice reappointed me to serve a second three-year term on the Advisory Committee. I completed that service in May 2017. (The maximum period of service on the Advisory Committee is six years.) I also served on the Advisory Committee’s Class Action Subcommittee, which took the lead for the full Advisory Committee on proposed amendments to the federal class action rule, Federal Rule of Civil Procedure 23. Those proposed amendments became effective on December 1, 2018.

(2013); Arthur R. Miller, *Simplified Pleading, Meaningful Days in Court, and Trials on the Merits: Reflections on the Deformation of Federal Procedure*, 88 N.Y.U. L. REV. 286, 314 n.105 (2013); D. Theodore Rave, *Governing the Anticommons in Aggregate Litigation*, 66 VAND. L. REV. 1183, 1186 n.5 (2013); Brandon L. Garrett, *Aggregation and Constitutional Rights*, 88 NOTRE DAME L. REV. 593, 610 n.82 (2012); Richard Marcus, *Still Confronting the Consolidation Conundrum*, 88 NOTRE DAME L. REV. 557, 560 n.17, 589 n.154 (2012); *Hearing on “The State of Class Actions Ten Years after the Class Action Fairness Act” Before the Committee on the Judiciary, Subcommittee on the Constitution and Civil Justice* (U.S. House of Representatives, Feb. 27, 2015) (statement of Prof. Patricia W. Moore), at 2 n.4.

5. I served as an Associate Reporter for the American Law Institute’s class action (and other multi-party litigation) project, *Principles of the Law of Aggregate Litigation*. I was the principal author of Chapter 3, which addresses class action settlements and attorneys’ fees. The ALI project was unanimously approved by the membership of the American Law Institute at its annual meeting in May 2009 and was published by the American Law Institute in May 2010. It has been frequently cited by courts and commentators.³

³ See, e.g., *Smith v. Bayer Corp.*, 564 U.S. 299, 316 (2011) n.11 (2011); *In re Google Inc. St. View Elec. Commc'ns Litig.*, 21 F.4th 1102, 1122–23 (9th Cir. 2021) (Bade, J., concurring), cert. denied. 143 S. Ct. 107 (2022); *In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, 421 F. Supp. 3d 12, 71 (E.D. Pa. 2019), *aff'd sub nom. In re Suboxone (Buprenorphine Hydrochlorine & Naloxone) Antitrust Litig.*, 967 F.3d 264 (3d Cir. 2020); *In re Google Inc. Cookie Placement Consumer Privacy Litig.*, 934 F.3d 316, 331 (3d Cir. 2019); *Keepseagle v. Perdue*, 856 F.3d 1039, 1069–70 (D.C. Cir. 2017) (Brown, J., dissenting); *In re Google Referrer Header Privacy Litig.*, 869 F.3d 737, 744, 749 (9th Cir. 2017); *Baker v. Microsoft Corp.*, 797 F.3d 607, 615 n. 5 (9th Cir. 2015), *rev'd on other grounds*, 137 S. Ct. 1702 (2017); *Hill v. State Street Corp.*, 794 F.3d 227, 229, 231 (1st Cir. 2015); *In re BankAmerica Corp. Secs. Litig.*, 775 F.3d 1060, 1063–67 (8th Cir. 2015); *In re Nexium Antitrust Litig.*, 777 F.3d 9, 19–20 (1st Cir. 2015); *In re Trans Union Corp. Privacy Litig.*, 741 F.3d 811, 813 (7th Cir. 2014); *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 171–72 (3d Cir. 2013); *Ira Holtzman, CPA v. Turza*, 728 F.3d 682, 689–90 (7th Cir. 2013); *In re Lupron Mktg. & Sales Practices Litig.*, 677 F.3d 21, 32–33 (1st Cir. 2012); *Klier v. Elf Atochem N.A., Inc.*, 658 F.3d 468, 474–75 nn.14–16 (5th Cir. 2011); *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1039 n.2 (9th Cir. 2011); *In re Chesapeake Energy Corp.*, 567 F. Supp. 3d 754, 776 (S.D. Tex. 2021); *Cabiness v. Educ. Fin. Solutions, LLC*, No. 16-cv-01109-JST, 2018 WL 3108991, at *8 n.4 (N.D. Cal. June 25, 2018); *Keepseagle v. Vilsack*, 118 F. Supp. 3d 98, 116 (D.D.C. 2015); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1355–56 (S.D. Fla. 2011); Abbe R. Gluck & Elizabeth Chamblee Burch, *MDL Revolution*, 96 N.Y.U. L. Rev. 1, 30 (2021); Myriam Gilles & Gary Friedman, *The Issue Class Revolution*, 101 B.U. L. Rev. 133, 139-140 (2021); Elizabeth Chamblee Burch & Margaret S. Williams, *Judicial Adjuncts in Multidistrict Litigation*, 120 Colum. L. Rev. 2129, 2121-22 (2020); Brian T. Fitzpatrick, *Why Class Actions Are Something Both Liberals and Conservatives Can Love*, 73 Vand. L. Rev. 1147, 1153 (2020); Robert G. Bone, *In Defense of the Cy-Pres-Only Class Action*, 24 Lewis & Clark L. Rev. 571, 575 (2020); David L. Noll, *MDL As Public Administration*, 118 Mich. L. Rev. 403, 457 (2019); Andrew D. Bradt & D. Theodore Rave, *It's Good to Have the "Haves" on Your Side: A Defense of Repeat Players in Multidistrict Litigation*, 108 Geo. L.J. 73, 99 (2019); Richard Marcus, *Revolution v. Evolution in Class Action Reform*, 96 N.C. L. REV. 903,

6. I have more than 40 years of experience as a practicing lawyer. I have had eight oral arguments before the U.S. Supreme Court, and numerous oral arguments in other federal and state appellate courts throughout the country, including oral arguments in eight federal circuits. As an attorney at Jones Day, I personally handled more than 100 class action cases, mostly (but not entirely) on the defense side. I have also served as co-counsel in numerous class actions post-Jones Day.

7. I have lectured and taught on class actions and other litigation topics throughout the United States and abroad, including presentations at law schools in Cambodia, Canada, China, Colombia, Croatia, Ecuador, Germany, India, Israel, Italy, Japan, the Philippines, Russia, South Korea, Taiwan, and Turkey. Over the years, I have frequently appeared as an invited speaker at class action symposia, conferences, and continuing legal education programs.⁴

8. I have testified as an expert in numerous class action cases and in other cases raising civil procedure issues. Between 2011 and the present, I testified in the following cases:

- *In re Marjory Stoneman Douglas High School Shooting FTCA Litigation*, No. 01:18-62758-WPD (S.D. Fla.) (*Parkland*) (submitted expert declaration, dated 02/08/22, on a motion to terminate lead counsel;

927–28, 933 n.161, (2018); Sergio J. Campos, *Mass Torts and Due Process*, 65 VAND. L. REV. 1059, 1063 (2012); Tanya J. Monestier, *Transnational Class Actions and the Illusory Search for Res Judicata*, 86 TUL. L. REV. 1, 66 (2011); Rhonda Wasserman, *Cy Pres in Class Action Settlements*, 88 S. CAL. L. REV. 97, 111 (2014); Ryan C. Williams, *Due Process, Class Action Opt Outs, and the Right to Sue*, 115 COLUM. L. REV. 599, 649–50 (2015).

⁴ Examples of those courses and speaking engagements are contained in my attached curriculum vitae (Appendix A).

submitted supplemental expert declaration, dated 10/28/22, on attorneys' fees issues);

- *Githieya v. Global Tel Link Corp.*, No. 1:15-cv-00986-AT (N.D. Ga.) (submitted expert declaration, dated 04/01/22, on attorneys' fees issues; submitted expert declaration, dated 07/22/22, on class certification and fairness issues in connection with a proposed class settlement);
- *Rosie D. v. Baker*, C.A. No. 01-30199-RGS (D. Mass.) (submitted expert declaration, dated 11/23/21, on attorneys' fees issues);
- *Bahn v. American Honda Motor Co.*, No. 2:19-cv-5984 RGK (C.D. Cal.) (submitted expert declaration, dated 11/22/21, on attorneys' fees issues);
- *In re Broiler Chicken Antitrust Litig.*, No. 1:16-CV-08637 (N.D. Ill.) (submitted expert declaration, dated 09/15/21, on attorneys' fees issues raised by the court);
- *Pinon v. Daimler AG.*, No. 1:18-cv-03984 (N.D. Ga.) (submitted expert declaration, dated 7/24/21, opining on the fairness of the settlement to members of the class under Fed. R. Civ. P. 23(e) and the adequacy of the class counsel and class representatives);
- *Rosas v. Sarbanand Farms, LLC.*, No. 2:18-CV-0112-JCC (W.D. Wa.) (submitted expert declaration, dated 4/19/20, opining that a final fairness hearing under Fed. R. Civ. P. 23(e) can be conducted telephonically);
- *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132 (N.D. Ga. Mar. 17, 2020) (submitted expert declaration on attorneys' fees on 10/29/19; submitted supplemental expert declaration on class settlement terms on 12/15/19), *aff'd in relevant part*, *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247 (11th Cir. June 3, 2021);

- *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices & Products Liability Litigation*, No. 3:17-md-02777-EMC (N.D. Cal.) (submitted expert declaration on settlement fairness, dated 4/25/19);
- *The Doan v. State Farm General Insurance Co.*, No. 1-08-CV-129264 (Cal. Sup. Ct. Santa Clara Cnty.) (submitted expert declaration on settlement fairness, attorneys' fees, expenses, and incentive payments, dated 1/16/19);
- *In re Syngenta AG MIR162 Corn Litigation*, No. 2:14-MD-02591-JWL-JPO (D. Kan.) (submitted expert declaration on attorneys' fees, expenses, and incentive payments, dated 7/10/18; submitted supplemental declaration on attorneys' fees, dated, 8/17/18);
- *In re Chinese-Manufactured Drywall Litigation*, MDL No. 2047 (E.D. La.) (submitted expert declarations on attorneys' fees issues, dated 05/04/17 and 08/01/18);
- *Jabbari v. Wells Fargo & Co.*, No. 15-cv-02159-VC (N.D. Cal.) (submitted expert declaration on class certification, settlement fairness, attorneys' fees, costs, and incentive payments in unauthorized accounts litigation, dated 1/19/18; submitted supplemental declaration on 5/21/18);
- *Lynch v. Lynch*, No. F.D. 14-6239-006 (Pa. Ct. Comm. Pl., Allegheny Cnty.) (submitted expert declaration on the nature of class action law practice in the context of a divorce proceeding involving a class action attorney) (dated 9/05/17);
- *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, No. 3:15-md-02672-CRB (N.D. Cal.) (submitted expert declaration addressing objections by class members to proposed 3.0-liter and Bosch settlements) (dated 4/28/17);
- *State of Louisiana & Vermilion Parish School Board v. Louisiana Land and Exploration Co., et al.*, No. 82162 (15th Judicial Court, Parish of

Vermilion) (submitted expert declaration on attorneys' fees issues) (dated 3/9/17);

- *Thacker v. Farmers Insurance Exchange*, Case No. 2006CV342 (Dist. Ct. Boulder County, Colo.) (submitted expert declaration on class certification issues) (dated 1/24/17);

- *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, No. 3:15-md-02672-CRB (N.D. Cal.) (submitted expert declaration addressing objections by class members to proposed 2.0-liter settlement) (dated 9/30/16);

- *In the Matter of Gosselin Group*, No. 15/3925/B (Antwerp Court of First Instance, Belgium) (submitted expert declaration discussing the role of U.S. federal appellate courts in the factfinding process) (dated 9/27/16);

- *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010*, Nos. 12-970, 15-4143, 15-4146, and 15-4645 (E.D. La.) (submitted expert declaration on class certification, settlement fairness, and attorneys' fees relating to proposed Halliburton/Transocean class settlement) (dated 8/5/16);

- *Ben-Hamo v. Facebook, Inc. and Facebook Ireland Limited*, No. 46065-09-14 (Central District Court, Israel) (submitted expert declaration on Sept. 3, 2015, on behalf of Facebook, Inc. and Facebook Ireland Limited addressing various issues of U.S. civil procedure and class action law);

- *Skold v. Intel Corp.*, Case No. 1-05-CV-039231 (Super. Ct. of Cal., Santa Clara County) (submitted expert declaration on class settlement approval, attorneys' fees, and incentive payments to class representatives) (dated 12/30/14);

- *In re National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323-AB (E.D. Pa.) (submitted expert declaration on class certification, class notice, and settlement fairness) (dated 11/12/14);

- *MBA Surety Agency, Inc. v. AT&T Mobility, LLC*, Case No. 1222-CC09746 (Mo. 22d Dist.) (submitted expert declaration on class certification and settlement fairness on 2/13/13; submitted a supplemental expert declaration on 2/19/13; and testified in court on 2/20/13);
- *In re Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico on April 20, 2010*, No. 2:10-md-02179-CJB-SS (E.D. La.) (“Deepwater Horizon”) (submitted expert declarations on class certification, fairness, and attorneys’ fees for the economic and property damages settlement (Doc. No. 7104-3) and class certification, fairness, and attorneys’ fees for the personal injuries settlement (Doc. No. 7111-4) (both dated 08/13/12), and submitted supplemental expert declarations for both class settlements (Doc. No. 7727-4) (economic), (Doc. No. 7728-2) (medical) (both dated 10/22/12));
- *Robichaux v. State of Louisiana, et. al.* (No. 55,127) (18th Judicial Dist. Ct., Iberville Parish, La.) (submitted written report on attorneys’ fees on February 20, 2012, gave deposition testimony on March 7, 2012, and testified in court on April 11, 2012); and
- *In re AT&T Mobility Wireless Data Services Sales Tax Litig.*, MDL No. 2147, Case No. 1:10-cv-02278 (N.D. Ill.) (submitted expert declarations on the fairness of a proposed class action settlement (Doc. No. 163-3) and on attorneys’ fees and incentive payments (Doc. 164-1) (both dated 03/08/11), and testified in court on March 10, 2011).

9. Courts reviewing class settlements and attorneys’ fees issues have relied extensively on my testimony. For example, in *Githieya v. Global Tel Link Corp.*, Judge Amy Totenberg cited and quoted my declaration several times in awarding attorneys’ fees to class

counsel.⁵ In *In re Broiler Chicken Antitrust Litig.*, Judge Thomas Durkin cited and quoted my declaration numerous times in awarding attorneys’ fees of over \$55 million, and he specifically stated that he found my declaration to be “very helpful[.]”⁶ In the *Syngenta MIR 162 Corn* MDL litigation, Judge John Lungstrum cited my two declarations on attorneys’ fees issues numerous times in his two opinions.⁷ Indeed, Judge Lungstrum credited my opinions on attorneys’ fees over the contrary opinions of five law professor experts retained by various objectors.⁸ In the *Deepwater Horizon* MDL litigation, Judge Carl Barbier cited and quoted my declarations (relating to a proposed settlement with British Petroleum) more than 60 times in his two opinions analyzing class certification and fairness.⁹ In a later order in that MDL, Judge Barbier repeatedly cited another declaration of mine—which I filed in connection with a class settlement involving Transocean and Halliburton.¹⁰ In the *Volkswagen Clean Diesel* MDL litigation, Judge Charles

⁵ *Githieya v. Global Tel Link Corp.*, No. 1:15-cv-00986-AT (N.D. Ga. Aug. 30, 2022) (Doc. 369).

⁶ 2021 U.S. Dist. LEXIS 228367, at *47 n.4, *49-50 & n.5 (N.D. Ill. Nov. 30, 2021).

⁷ See *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1112 (D. Kan. 2018) (granting final approval of class settlement and awarding total attorneys’ fees); *In re Syngenta AG MIR 162 Corn Litig.*, No. 14-MD-2591-JWL, 2018 WL 6839380 (D. Kan. Dec. 31, 2018) (allocating attorneys’ fees among common benefit counsel and individually retained private attorneys).

⁸ *In re Syngenta*, 2018 WL 6839380 at *4.

⁹ See *In re Deepwater Horizon*, 910 F. Supp. 2d 891, 903, 914–16, 918–21, 923–24, 926, 929–33, 938, 941, 947, 953, 955, 960, 962 (E.D. La. 2012) (approving economic and property damages settlement), *aff’d*, 739 F.3d 790 (5th Cir. 2014); *In re Deepwater Horizon*, 295 F.R.D. 112, 133–34, 136, 138–41, 144–45, 147 (E.D. La. 2013) (approving medical benefits settlement).

¹⁰ See Order and Reasons, Case No. 2:10-md-02179-CJB-JCW (Doc. No. 22252) (E.D. La. 02/15/17); available at <http://www.laed.uscourts.gov/sites/default/files/OilSpill/2152017OrderAndReasons%28HESI%26TOsettlement%29.pdf> (last visited Feb. 12, 2023).

Breyer repeatedly cited and quoted my two declarations in his three opinions—relating to the 2.0-liter VW class settlement, the 3.0-liter VW class settlement, and the class settlement with VW’s co-defendant, Bosch.¹¹ In the *AT&T Mobility* MDL litigation, then-District Judge Amy St. Eve (now a Judge on the Seventh Circuit) cited and quoted my declarations more than 20 times in approving a class settlement and awarding attorneys’ fees.¹² In the *Equifax Data Breach* case, Judge Thrash considered various expert reports relating to a class settlement and proposed attorneys’ fees; he noted that, although he exercised his own independent judgment, he found my declaration to be “particularly helpful.”¹³ In the *Wells Fargo Unauthorized Accounts* litigation, Judge Vince Chhabria cited my declaration in ordering that objectors to a class settlement post an appeal bond.¹⁴ In *Skold v. Intel Corp.*, Judge Peter Kirwan cited my declaration in approving a class settlement and awarding attorneys’ fees.¹⁵

¹¹ See *In re Volkswagen “Clean Diesel” Marketing, Sales Practices & Prods Liab. Litig.*, No. 3:15-md-02672-CRB, 2016 WL 6248426, at *18, *19, *20 (N.D. Cal. Oct. 25, 2016), *appeal filed*, No. 16-17185 (9th Cir. Nov. 29, 2016); Order Granting Final Approval of the Consumer and Reseller Dealership 3.0-Liter Class Action Settlement, Case No. 3:15-md-02672-CRB (Doc. No. 3229) (filed 05/17/17), at 34, 35, 38; Order Granting Final Approval of the Bosch Class Action Settlement, Case No. 3:15-md-02672-CRB (Doc. No. 3230) (filed 05/17/17), at 18.

¹² See *In re AT&T Mobility Wireless Data Svcs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 956–59, 961, 963–65 (N.D. Ill. 2011) (approving class settlement); *In re AT&T Mobility Wireless Data Svcs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1032 n.3, 1034–35, 1037, 1040, 1042 (N.D. Ill. 2011) (awarding attorneys’ fees).

¹³ *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132 (N.D. Ga. Mar. 17, 2020), *aff’d in relevant part*, No. 20-10249, 2021 WL 2250845 (11th Cir. June 3, 2021).

¹⁴ See *Jabbari v. Wells Fargo & Co.*, No. 15-cv-02159-VC, slip op. at 14 (N.D. Cal. June 14, 2018) (Doc. No. 271), available at

¹⁵ See *Skold v. Intel Corp.*, No. 1-05-CV-039231 (Cal. Super. Ct. Santa Clara County) (Jan. 29, 2015), at 7, available at <http://lawzilla.com/blog/janet-skold-et-al-vs-intel-corporation/>.

10. In this case, I am being compensated at my standard hourly rate of \$985.00 (\$1,075.00 as of January 1, 2023).

11. Additional information regarding my qualifications and experience—including a list of my publications—can be found in my curriculum vitae (attached hereto as Appendix A).

III. MATERIALS RELIED UPON

12. In addition to reviewing cases and materials in other class action settlements, I reviewed numerous documents in the instant case:

- (1) Lodestar data provided by class counsel;
- (2) Attorney and paralegal time records provided by class counsel;
- (3) Expense summaries provided by class counsel;
- (4) Various complaints and judicial rulings in the *Vogt v. State Farm* case, which went to trial, and the 10 cases that were active at the time the nationwide class settlement was reached;
- (5) Bullet points from class counsel regarding the roles played by the class representatives;
- (6) *Rogowski et al.* Motion for Preliminary Approval and attachments; and,
- (7) Near-final Declaration of Norman Siegel in Support of Class Counsel's Motion for Attorney's Fees, Costs, Expenses and Service Awards (hereafter referred to as "Siegel Att. Fees Decl.").

IV. BACKGROUND OF THIS LITIGATION AND SETTLEMENT

A. Overview of the Litigation

13. This Court is thoroughly familiar with the details of the litigation, which has resulted in a nationwide class settlement. Thus, I focus solely on those facts that are critical to my expert opinions.¹⁶

14. The class members are owners of one or more universal life insurance policies (Forms 94030/A94030 and 94080/A94080, hereinafter “the Policy” or “the Policies”). The Policies contain both a death benefit and an investment component (an interest-bearing savings account). The monthly value of each Policy (“the Account Value”) is subject to monthly charges against the savings accounts: (1) the cost of insurance charge (“COI Charge”), and (2) the monthly expense charge (“Expense Charge”). Plaintiffs allege that State Farm has violated the Policies’ authorized mortality charges and has deducted non-mortality expenses in calculating the COI Charge. In addition, plaintiffs allege that State Farm has failed to comply with the Policies’ \$5 Expense Charge limit and instead charges both the \$5 Expense Charge and the additional unauthorized COI Charge. Thus, plaintiffs assert a breach of contract claim with respect to the COI charge and another breach of contract claim with respect to the Expense Charge. In addition, plaintiffs seek recovery for conversion. Finally, plaintiffs seek declaratory relief regarding the

¹⁶ For the facts set forth in the Declaration, I rely on the numerous district court and appellate rulings in this litigation, as well as on the Motion for Preliminary Approval. I also rely on lodestar data, attorney and paralegal time records, and other information provided by class counsel. *See* ¶ 12.

parties' rights and duties and injunctive relief barring State Farm from collecting inflated charges in violation of the Policies.

15. Before reaching a global, nationwide class settlement, both sides litigated vigorously in numerous lawsuits across the country, including filing and opposing multiple summary judgment and *Daubert* motions, litigating class certification motions, litigating a full-blown Missouri class trial, and litigating multiple appeals and attempted appeals. As discussed below, a Missouri class won a decisive trial victory, and plaintiffs in the various cases have obtained multiple favorable rulings on summary judgment and class certification. State Farm, however, has also won some significant legal rulings, revealing that both sides faced serious risks from continuing on a litigation path.

B. Individual Lawsuits

16. Class counsel filed and litigated 11 separate cases, with State Farm adopting a vigorous, "take-no-prisoners" defense in each. As described by class counsel (Doc. 47-2 at 4-41; Siegel Att. Fees Decl. ¶ 5), statewide putative class suits were filed in the Western District of Missouri, the Northern District of California, the Western District of Washington, the Southern District of Texas (later transferred to the Western District of Texas), the District of Minnesota, the District of Arizona, the District of Oregon, the Middle District of Florida, the Northern District of Georgia, the Eastern District of New York, and another in the Western District of Missouri. As noted, the rulings were mixed; plaintiffs prevailed on some or all summary judgment motions in several cases (as well as in a contested class trial) but had less success in others. Courts have been receptive to plaintiffs' motions for class certification, although State Farm has argued aggressively against class certification, both at the trial and appellate levels. State Farm has also

repeatedly (but unsuccessfully) sought exclusion of plaintiffs' damages expert. The litigation overall demonstrated that both sides were facing significant risks going forward.

17. Before delving into the merits of class counsel's request, I believe it is important to address a novel procedural point. Although this settlement is independent of the now resolved case in Missouri (*Vogt v. State Farm Life Ins. Co.* (W.D. Mo.)), there is a substantial relationship between *Vogt* and class counsel's work in this case. Class counsel obtained a \$38,844,089 judgment, plus post-judgment interest, for Missouri policyholders on the same claims that are being settled now for the rest of the policyholders in the country. Class counsel was paid in *Vogt*, and the district court awarded fees using the same methodology I employ here—reaching the conclusion that 33⅓ percent of the judgment was appropriate. It cannot be reasonably disputed that the work in *Vogt* contributed to this nationwide settlement. Class counsel obtained favorable discovery and favorable precedent in *Vogt* that were used in the 10 other cases. Importantly, they successfully defended *Vogt* through several appeals that could have produced unfavorable precedent and jeopardized the claims of the settlement class here. There is no doubt that the rulings in *Vogt* contributed substantially to class counsel's ability to obtain this settlement for the settlement class. As a result, in various parts of this Declaration, I comment on and cite to rulings in *Vogt*. Nonetheless, even if *Vogt* were removed from the equation, my opinion that the fees requested here are reasonable would not change; class counsel conducted an extraordinary amount of additional work, undertaking significant additional risk, for four years after *Vogt* on behalf of the class to obtain this settlement. In other words, while class counsel's work in *Vogt* absolutely contributed to the settlement, it was the extraordinary work conducted *after Vogt* that secured this monumental recovery.

18. Rather than discussing the details of all 11 lawsuits, which are set forth in the Siegel declaration attached to the Motion for Preliminary approval, I describe herein two markedly different case scenarios to illustrate the successes and challenges faced by each side: *Vogt v. State Farm Life Ins. Co.* (W.D. Mo.), and *Whitman v. State Farm Life Ins. Co.* (W.D. Wa.).

Vogt v. State Farm Life Ins.

19. As noted (¶ 17), I believe that *Vogt* is instructive even though it is not part of the present settlement. *Vogt* was the first case brought by class counsel against State Farm involving the claims at issue. It was filed in the Western District of Missouri on June 15, 2016, on behalf of a class of over 25,000 current and former policyholders whose policies were issued in Missouri. Following an extensive discovery process, in April 2018, the district court denied State Farm's motion for summary judgment, rejecting State Farm's challenges to the breach of contract claims and finding that the claims were not barred by the statute of limitations. That same month, the court granted plaintiff's motion for class certification. State Farm attempted without success to obtain Eighth Circuit interlocutory review of the class certification order under Rule 23(f).

20. Prior to trial, the class successfully obtained partial summary judgment on its breach of contract claims, leaving only damages for trial. A classwide trial commenced on June 1, 2018. At the close of the class's case, State Farm was unsuccessful in seeking judgment as a matter of law. State Farm presented its case and then renewed its motion for judgment as a matter of law, which the court took under advisement. At the conclusion of the four-day trial, and after just over two hours of deliberations, the jury announced its verdict in favor of the class on breach of contract and conversion, awarding damages of more than \$34.33 million. As the jury found,

State Farm had been overcharging its policyholders for 23 years. State Farm attempted without success to obtain decertification of the class and sought (again unsuccessfully) judgment as a matter of law or, in the alternative, a new trial. The court rejected all of State Farm’s challenges but denied plaintiff’s request for prejudgment interest.

21. State Farm appealed the jury verdict and class certification ruling to the Eighth Circuit, and plaintiff cross-appealed the denial of prejudgment interest. State Farm’s appeal was supported by amicus briefs from the Chamber of Commerce, the American Council of Life Insurers, and the Washington Legal Foundation, while Public Citizen filed an amicus brief in support of the class solely on the issue of class certification. In June 2020—after full briefing (including State Farm’s submission of a 32-volume record of material) and oral argument—the Eighth Circuit rejected all of State Farm’s challenges.¹⁷ Thus, it rejected State Farm’s breach of contract, statute of limitations, and conversion arguments, as well as State Farm’s challenges to class certification, plaintiff’s damages models, and various other evidentiary rulings. On the cross appeal, the Eighth Circuit agreed with the plaintiff that prejudgment interest was warranted. Nonetheless, despite the Eighth Circuit’s ruling, the parties continued to dispute the prejudgment interest issue. On remand, the district court awarded prejudgment interest. During this same period, State Farm also sought certiorari from the U.S. Supreme Court with respect to class certification, arguing that, for several reasons, the district court erred in certifying (and refusing to decertify) the class. State Farm was supported in its certiorari petition by amicus briefs from the Chamber of Commerce and the American Council of Life Insurers. The Supreme Court denied

¹⁷ *Vogt v. State Farm Life Ins. Co.*, 963 F.3d 753 (8th Cir. 2020).

certiorari in April 2021. Subsequently, the parties argued a second appeal to the Eighth Circuit filed by State Farm on the issue of prejudgment interest. On December 8, 2021, the Eighth Circuit affirmed the district court's award of prejudgment interest.¹⁸ Later that month, State Farm paid the judgment, including prejudgment and post-judgment interest.

Whitman v. State Farm Life Insurance Co.

22. *Whitman* was filed against State Farm in October 2019 in the Western District of Washington on behalf of a class of Washington policyholders. In September 2021, following discovery, the court granted plaintiff's motion for class certification and rejected challenges to plaintiff's damages expert, Scott Witt. State Farm sought Rule 23(f) review from the Ninth Circuit, but that court denied review in December 2021. In May 2022, State Farm filed summary judgment motions challenging all of plaintiff's claims and also arguing that the class's claims were barred by the statute of limitations. In September 2022, about a month before the trial was scheduled to begin—and after the parties had already begun exchanging pre-trial submissions, including deposition designations, and filing motions *in limine*—the court granted summary judgment in State Farm's favor on all of plaintiff's claims, ending the litigation in the trial court. Later that month, plaintiff filed an appeal to the Ninth Circuit, and State Farm filed a conditional cross appeal challenging the district court's certification of the class. Plaintiff's opening brief was due on November 25, 2022, but the briefing deadlines were stayed in light of the nationwide class settlement.

¹⁸ *Vogt v. State Farm Life Ins. Co.*, 19 F.4th 1071 (8th Cir. 2021).

23. At the same time they were prosecuting *Whitman* (W.D. Wa.), class counsel were prosecuting nine other cases against State Farm. Not surprisingly, State Farm defended those cases as vigorously as it defended *Vogt* and *Whitman*. The parties engaged in discovery in each of the cases. Even excluding the extensive discovery and briefing undertaken by class counsel in *Vogt*, class counsel sought, obtained, and reviewed between 35,603 and 44,609 documents in the cases that followed. They took or defended 24 depositions (not including the 10 days of depositions taken in *Vogt*), resulting in 289 deposition exhibits. They served or responded to 385 interrogatories, 727 requests for production, 286 requests for admission, and 56 requests for documents via subpoena. State Farm made four separate attempts to obtain interlocutory appellate review. And there was extensive legal briefing in the cases, including 13 separate summary judgment motions, eight class certification or decertification motions, 13 *Daubert* motions, and four Rule 12 motions. Siegel Att. Fees Decl. ¶¶ 10-11. At the time of settlement, the case in Minnesota (*Jaunich*) was largely ready for trial, and the case in California (*Bally*) had a trial date looming. Furthermore, in the present case, this Court had denied State Farm's motion to strike and/or dismiss the multi-state class actions, giving class counsel a potential pathway to certify a litigation class against State Farm that encompassed policyholders who resided in states other than the states where cases were presently pending. Put another way, that ruling gave class counsel the potential for nationwide relief on behalf of the policyholders across multiple jurisdictions.

Recap

24. As the above discussion makes clear, State Farm and plaintiffs litigated all of the cases vigorously, including dispositive motions, motions for class certification, and motions to exclude expert testimony. A global settlement became possible only because of class counsel's

persistence in all of the cases, and only after class counsel won a Missouri classwide judgment in *Vogt* of more than \$38 million, plus post-judgment interest, and successfully defended that judgment on appeal. But in light of various adverse rulings, including those in *Whitman*, ultimate success for the nationwide class as a whole was not assured, and class counsel thus had to be willing to compromise.

C. The Settlement

25. During June, August, and September 2022, the parties conducted three full-day mediations. Retired U.S. District Judge John Bonner was the mediator for the first two sessions, and retired U.S. District Judge Layn Phillips was the mediator for the third session. During the third session, the parties reached the material terms of the current nationwide class settlement.

26. The settlement creates a \$325 million non-reversionary cash settlement fund. From that fund, class counsel are seeking: (1) attorneys' fees of one-third of the fund, (2) expenses of up to \$1.5 million, and (3) service awards of \$25,000 for each of the 11 class representatives. Instead of setting up a claims process, the settlement provides for a distribution plan based on (1) a minimum payment of \$10 per class member, and (2) a pro-rata portion of the net settlement fund according to the COI Charges and Expense Charges paid by each class member. The agreement provides for equitable adjustments for current policy owners and Missouri class members who received proceeds under the *Vogt* judgment.

27. The settlement fund represents virtually 100 percent of the claimed damages for Count II (the Expense Charge claim), as analyzed by plaintiffs' expert, and a significant portion of the claimed damages for Count I (the COI Charge claim).¹⁹

V. SUMMARY OF OPINIONS

28. **Reasonableness of Fees.** The first issue is whether the fees sought (33⅓ percent) are reasonable. In my view, those fees are reasonable. Under the percentage-of-the-fund method, which I believe is the preferable method here to calculate fees in a common fund case, a 33⅓ percent fee is justified by the so-called *Johnson* factors. Excluding the work they performed in *Vogt* (which I will discuss later), class counsel devoted more than 23,000 hours to this litigation; the legal, factual, expert, and class certification issues were complex and challenging; great skill was required to litigate these cases; the plaintiff firms were hampered in their ability to take on other major matters; a 33⅓ percent fee is customary; individual plaintiffs entered into 33⅓ to 40 percent contingent fee agreements; the cases imposed significant time challenges; the results obtained were extraordinary; class counsel are highly regarded; and the fees sought are supported by awards in other cases. Although the Eighth Circuit has not endorsed a separate approach for mega-fund cases (\$100 million+ settlements), the percentage sought is supported under such an analysis, given the challenges posed and the results obtained. I understand that the \$325 million settlement is likely the largest all-cash cost-of-insurance insurance settlement in U.S. history, and it is the largest known class action settlement paid by State Farm. Siegel Att. Fees Decl. ¶ 3.

¹⁹ Doc. 47 at 40.

29. I do not believe that a lodestar cross-check is necessary or appropriate. In any event, I have done a lodestar cross-check. That cross-check is calculated based on 23,110 hours spent by class counsel (11,756 hours spent by Miller Schirger; 8,680 hours spent by Stueve Siegel Hanson, and 2,674 hours spent by other firms) and separately by adding another 1,888 hours representing the time that class counsel expect to incur going forward in the administration of the settlement. These figures do not include the hours spent litigating *Vogt*. Stueve Siegel Hanson's blended hourly rate is \$792.47; Miller Schirger's blended hourly rate is \$706; and the other firms' blended hourly rate is \$669.06. The total lodestar is \$16,977,873. The expected future lodestar is conservatively estimated to be \$1,387,056.96 (for the 1,888 hours) based on class counsel's experience in post-settlement work in other cost of insurance litigation. Based on the total lodestar figure and the requested fee of 33⅓ percent of the \$325 million settlement (approximately \$108,333,333), the resulting multiplier is 5.9.

30. Without taking into account the 1,888 hours of anticipated future work, the multiplier is 6.4. In my opinion, a multiplier of either 5.9 or 6.4 is fully justified based on the unique risks and challenges in this litigation.

31. In addition, if the Court considers both the judgment obtained and the fee already awarded to class counsel in *Vogt*, as courts in multi-district litigation would ordinarily do, in combination with the settlement, the resulting multiplier is 4.9, which is well within ordinary standards for less complex and challenging cases. In all events, courts have awarded fees in a number of cases with multipliers exceeding 6.4, and it would be entirely appropriate for this Court to do so here.

32. **Out-of-Pocket Costs.** In my opinion, the out-of-pocket costs sought, \$1,366,155.21, are reasonable given the complexity and multi-jurisdictional nature of the litigation.

33. **Service Awards.** Plaintiffs' request for \$25,000 in service awards for each class representative is reasonable and in line with service awards in other cases. The class representatives performed critical functions throughout the litigation.

VI. DETAILED DISCUSSION OF OPINIONS: OVERVIEW

34. In the remaining sections of this Declaration, I explain in detail my opinions on the reasonableness of: (1) the proposed attorneys' fees, (2) the out-of-pocket costs requested by the class counsel, and (3) the proposed service awards to the class representatives.

VII. ATTORNEYS' FEES

A. The Attorneys' Fees Requested by Class Counsel Are Reasonable

35. Class counsel are seeking, as attorneys' fees, 33 $\frac{1}{3}$ percent of the \$325 million settlement fund, *i.e.*, approximately \$108,333,333. In this section of the Declaration, I offer my opinions on the reasonableness of that request.

1. This Court Should Use the Percentage-of-the-Fund Method

36. As an initial matter, this Court must decide whether to use the percentage-of-the-fund method (the percentage method) or the lodestar method. Courts in the Eighth Circuit have

discretion in common fund cases to choose either the percentage method or the lodestar method.²⁰

Nonetheless, in the Eighth Circuit and elsewhere, courts strongly prefer to use the percentage method in common fund cases.²¹ This preference for the percentage method—which I wholeheartedly support—stems primarily from the fact that the percentage method “most closely aligns the interests of the lawyers with the class, since the more recovered for the class, the more

²⁰ See, e.g., *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244 (8th Cir. 1996); *In re IBP, Inc. Secs. Litigation*, 328 F. Supp. 2d 1056, 1064 (D.S.D. 2004) (noting that courts have “discretion to use either the lodestar method or the percentage of the benefit method”).

²¹ See, e.g., *Campbell v. Transgenomic, Inc.*, 4:17-CV-3021, at *7 (D. Neb. June 3, 2020) (noting that “[t]he percentage-of-the-benefit method is recommended in common-fund cases”) (citing *Johnston*, 83 F.3d at 244–45); *Anderson v. Travelex Ins. Servs.*, 8:18-CV-362, 2021 WL 4307093 *3 (D. Neb. Sep. 22, 2021) (courts have discretion to apply either the percentage of the fund or lodestar method) (citing *Johnston*, 83 F.3d at 245–46); *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 WL 3859763, at *2 (W.D. Mo. Aug. 16, 2019) (“in common fund cases, the percentage of the benefit approach is generally recommended”); *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980 (D. Minn. 2005) (percentage test is “well established” in the Eighth Circuit) (quoting *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999)); *Gottlieb v. Barry*, 43 F.3d 474, 483, 487–88 (10th Cir. 1994) (preference for the percentage of the fund method); *In re Southeastern Milk Antitrust Litig.*, No. 2:07-CV208, 2013 WL 2155387, at *2 (E.D. Tenn. May 17, 2013) (noting that the “percentage-of-the-fund method clearly appears to have become the preferred method in common fund cases”); *Jones v. Dominion Resources Services, Inc.*, 601 F. Supp. 2d 756, 758 (S.D. W. Va. 2009) (“The percentage method has overwhelmingly become the preferred method for calculating attorneys’ fees in common fund cases.”); MANUAL FOR COMPLEX LITIGATION (FOURTH) § 14.121 (2004) (noting that the “vast majority” of courts apply the percentage method); Theodore Eisenberg, Geoffrey Miller & Roy Germano, *Attorneys’ Fees in Class Actions: 2009–2013*, 92 N.Y.U. L. REV. 937, 963 (2017) (noting that the lodestar method “was used in only 6.29 [percent] of cases during the 2009–2013 period”); Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD. 811, 832–33 (2010) (noting that district courts “employed the lodestar method in only 12 percent of settlements” from 2006–2007); Theodore Eisenberg & Geoffrey Miller, *Attorneys’ Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. EMPIRICAL LEGAL STUD. 248, 267 (2010) (lodestar method was used in only 9.6 percent of settlements from 2003–2008); AM. LAW INST., PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION § 3.13(b) (2010) (noting that the “percentage-of-the-fund approach is the method [that should be] utilized in most common fund cases”); *Report of the Third Circuit Task Force on Court Awarded Attorney Fees*, 108 F.R.D. 237, 246–49 (1985) (concluding that courts should generally use the percentage method in common fund cases).

the attorneys stand to be paid.”²² Moreover, “one of the primary advantages of the percentage of recovery method is that it is thought to equate the interests of class counsel with those of the class members and encourage class counsel to prosecute the case in an efficient manner.”²³ By contrast, the lodestar method arguably gives class counsel an incentive to work more hours than are necessary and to avoid early settlement.²⁴ Under the percentage method, by contrast, class

²² *In re Charter Communications, Inc.*, MDL No. 1506 All Cases, Consolidated Case No. 4:02-CV-1186 CAS, at *22 (E.D. Mo. June 30, 2005); *accord, e.g., Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1241 (D.N.M. 2016) (same); *In re U.S. Bancorp Litigation*, 276 F.3d 1008, 1010 (8th Cir. 2002) (concluding that a fee award of 36% was not improper because class counsel had helped “obtain[] significant monetary relief” for the class); *Wal-Mart Stores, Inc. v. Visa USA, Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (noting that the percentage method “provides a powerful incentive for the efficient prosecution and early resolution of litigation”); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269 (D.C. Cir. 1993) (“It matters little to the class how much the attorney spends in time or money to reach a successful result.”); *Shaw v. Interthinx, Inc.*, No. 13-CV-01229-REB-NYW, 2015 WL 1867861, at *5 (D. Colo. Apr. 22, 2015) (“[A] percentage of the common fund is less subjective than the lodestar plus multiplier approach, matches the marketplace most closely, and is the better suited approach when class counsel were retained on a contingent fee basis” (citation omitted)); *Craft v. Cnty. of San Bernardino*, 624 F. Supp. 2d 1113, 1123 (C.D. Cal. 2008) (emphasizing that the percentage method “aligns the interests of counsel and the class by allowing class counsel to directly benefit from increasing the size of the class fund”); *see also* NAT’L ASS’N OF CONSUMER ADVOCATES, STANDARDS AND GUIDELINES FOR LITIGATING AND SETTLING CONSUMER CLASS ACTIONS 27 (3d ed. 2014) (noting that the percentage method is preferable from consumers’ perspective because it “keeps class counsel’s financial interest closely aligned with that of the class itself” and “approximates the ‘free market’ negotiated fees obtained in traditional contingency litigation”).

²³ *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 992 (cleaned up); *see also In re Chrysler Motors Corp. O.E.P. Lit.*, 736 F. Supp. 1007, 1009 (E.D. Mo. 1990) (“many courts, including the Supreme Court, have taken note of the fact that the awarding of a percentage of the recovery in a class action common fund case is a more appropriate and efficient means of calculating an attorneys’ fee award”) (*citing Blum v. Stenson*, 465 U.S. 886, 901 n. 16, (1984)).

²⁴ *See, e.g., Premachandra v. Mitts*, 727 F.2d 717, 733 (8th Cir. 1984) (courts may reduce fee awards accordingly in order to “[dis]courage overpreparation”); *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 721 (7th Cir. 2001) (“[T]he lodestar approach creates [an] incentive to run up the billable hours.”); *Swedish Hosp. Corp.*, 1 F.3d at 1268–69 (“[U]sing the lodestar approach . . . attorneys are given incentive to spend as many hours as possible, billable to a firm’s most

counsel are incentivized to work vigorously because their rewards, if any, are commensurate with the success they achieve on behalf of the class.²⁵ Moreover, the lodestar method has been heavily criticized by courts and commentators as “difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation to reach a predetermined result.”²⁶ As the Eighth Circuit has noted, the lodestar calculation “increases the workload of an already-overtaxed

expensive attorneys [and] . . . there is a strong incentive against early settlement since attorneys will earn more the longer a litigation lasts.”); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 762 (S.D. Ohio 2007) (noting that the lodestar method “incentivizes attorneys to work more hours, without regard to the quality of the output or the class’s needs”); *McDaniel v. Cnty. of Schenectady*, 595 F.3d 411, 418 (2d Cir. 2010) (“The lodestar method . . . creates an incentive for attorneys to bill as many hours as possible, to do unnecessary work, and for these reasons also can create a disincentive to early settlement.”); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 n.5 (9th Cir. 2002) (“[I]t is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary . . . , [and] the lodestar method does not reward early settlement.”); *In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, slip op. at 18 (N.D. Cal. Mar. 18, 2013) (“[T]he lodestar method’s limitations lie in its creating a possible incentive for counsel to expend more hours than is necessary on a litigation or to delay settlement.”); REPORT OF THE FEDERAL COURTS STUDY COMMITTEE 104 (Fed. Judicial Ctr. Apr. 2, 1990), available at <https://www.fjc.gov/sites/default/files/2012/RepFCSC.pdf> (noting that the lodestar method gives class counsel “incentives to run up hours unnecessarily”).

²⁵ See, e.g., *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 992 (“Under the percentage method, the more the attorney succeeds in recovering money for the client . . . the higher dollar amount of fees the lawyer earns.”) (cleaned up).

²⁶ *Ramah Navajo Chapter v. Babbitt*, 50 F. Supp. 2d 1091, 1108 (D.N.M. 1999). Accord, e.g., *Swedish Hosp. Corp.*, 1 F.3d at 1269–70 (“The lodestar method makes considerable demands upon judicial resources since it can be exceptionally difficult for a court to review attorney billing information over the life of a complex litigation and make a determination about whether the time devoted to the litigation was necessary or reasonable A related weakness in the lodestar approach is that it often results in substantial delay in distribution of the common fund to the class”); REPORT OF THE FEDERAL COURTS STUDY COMMITTEE 104 (Fed. Judicial Ctr. Apr. 2, 1990), available at <https://www.fjc.gov/sites/default/files/2012/RepFCSC.pdf> (noting that the lodestar method may “unduly burden judges”).

judicial system,” can be “insufficiently objective,” brings about inconsistent results, may be “subject to manipulation,” and can lead to “a disincentive for the early settlement of cases.”²⁷

37. To be sure, a percentage approach may raise some potential concerns when a class settlement involves a reversionary fund (all unclaimed funds revert to the defendant), and the claims process is a complicated one (thus deterring class members from filing claims to obtain any cash recovery).²⁸ Here, however, the proposed settlement creates a non-reversionary cash fund. And here, the proposed settlement does not create a complicated claims process that would discourage class members from submitting claims. Instead, the settlement provides for a distribution plan based on a minimum payment of \$10 per class member, and a pro-rata portion of the net settlement fund according to the COI Charges and Expense Charges paid by each class member. No funds will revert to State Farm. And class members will receive their share of the settlement without being required to take any action, which, in my view, is the ideal way to distribute money from a common fund, where that is possible.

38. In my opinion, the above-discussed rationales favoring the percentage method over the lodestar method are directly applicable here. Class counsel took on difficult and challenging litigation on a contingency basis and achieved enormous success. Class counsel

²⁷ *Johnston*, 83 F.3d at 245 n.8 (citations omitted); see also *In re Copley Pharm., Inc.*, 1 F. Supp. 2d 1407, 1411 (D. Wyo. 1998) (“[t]he lodestar method . . . discourages early settlement, even on terms favorable to plaintiffs, because the attorneys will earn more the longer a litigation lasts”).

²⁸ See, e.g., *Shanley v. Evereve, Inc.*, 22-CV-0319 (PJS/JFD), at *22 (D. Minn. Nov. 18, 2022) (defendant-friendly claims process and unclaimed settlement amounts would revert to the defendant).

obtained class certification, prevailed on myriad dispositive motions, and were preparing for the second class trial following the case they won (and successfully defended on appeal) in Missouri. Their efforts ultimately led to an extraordinary settlement. As I discuss below, the percentage sought by class counsel is reasonable (§§ 39–102), and there is no need for the Court to conduct a lodestar analysis even as a cross-check to the percentage method (§ 103). In any case, as I explain, a lodestar cross-check fully supports class counsel’s request for 33⅓ percent of the fund (§§ 104–133).

2. The 33⅓ Percent Requested Here Is Reasonable

39. As noted, class counsel seek attorneys’ fees of 33⅓ percent of the \$325 million settlement fund. In the Eighth Circuit, “a fee award totaling a third of the common fund” is “in line with other awards in [that] circuit.”²⁹ Indeed, as the Eighth Circuit has noted, “courts have frequently awarded attorneys’ fees ranging up to 36% in class actions.”³⁰ As I discuss below, based on the applicable criteria, it is my opinion that the percentage sought by class counsel here is reasonable.

²⁹ *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019).

³⁰ *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) (citing *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002)).

a. The Percentage Requested Is Justified Under the *Johnson* Factors Based on the Compelling Circumstances in This Litigation

40. It is fundamental that, for a difficult and risky case, a substantial fee is justified.³¹

In the Eighth Circuit, a district court addressing an attorneys' fee award is required to assess the facts and circumstances by looking at 12 factors. These so-called *Johnson* factors, originally set forth by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*,³² are:

(1) the time and labor involved; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) any prearranged fee—this is helpful but not determinative; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.³³

³¹ See, e.g., *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 994 (“Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees.”); *In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *4 (D. Kan. July 29, 2016) (noting that “the case presented a great deal of risk” to class counsel in awarding attorneys’ fees of 33⅓ percent of \$835 million fund); *In re U.S. Foodservice, Inc. Pricing Litig.*, No. 3:07-md-01894 (AWT), slip op. at 5 (D. Conn. Dec. 9, 2014) (Dkt. No. 521) (noting that “Class Counsel undertook numerous and significant risks” in awarding attorneys’ fees of 33⅓ percent of \$297 million fund); *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (noting that “[t]here were significant risks involved in this litigation” and that “the case did not lend itself to easy proof of liability or damages” in awarding attorneys’ fees of 33 percent); *Been v. O.K. Indus., Inc.*, No. CIV-02-285-RAW, 2011 WL 4478766, at *6 (E.D. Okla. Aug. 16, 2011) (emphasizing that the case had been “prosecuted to judgment and through two appeals” in awarding attorneys’ fees of 42 percent); *Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136, 148 (E.D. Pa. 2000) (noting that “[v]irtually nothing about this case was simplistic” in awarding attorneys’ fees of 33⅓ percent).

³² 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989).

³³ *Barfield v. Sho-Me Power Elec. Cooperative*, 2015 WL 3460346, at *5 (W.D. Mo. June 1, 2015) (quoting *Allen v. Tobacco Superstore, Inc.*, 475 F.3d 931, 944 n.3 (8th Cir. 2007)).

41. The *Johnson* factors are considered in their totality or by groups of related factors, and courts have discretion on whether to apply particular factors and how much weight to give each one.³⁴ Moreover, in a common fund case, “the *most critical factor* in assessing fees is the degree of success obtained.”³⁵

42. In my opinion, the *Johnson* factors, taken as a whole, strongly support the reasonableness of the 33⅓ percent fee award requested in this case. I address each factor separately below.

i. Time and Labor Required

43. This litigation has required a significant investment of time by class counsel. As set forth more fully below (¶¶ 106–108), to date, class counsel have devoted more than 23,000

³⁴ See, e.g., *Keil v. McCoy*, 862 F.3d 685, 703 (8th Cir. 2017) (a district court is “not required to discuss all of the factors, since rarely are all of the *Johnson* factors applicable”) (cleaned up); *Yarrington v. Solvay Pharmaceuticals, Inc.*, 697 F. Supp. 2d 1057, 1062 (D. Minn. 2010) (“not all of the individual factors will apply in every case, affording the Court wide discretion in the weight to assign each factor”); *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 993 (“not all of the individual *Johnson* factors will apply in every case, so the court has wide discretion as to which factors to apply and the relative weight to assign to each”) (citing *Useton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849, 854 (10th Cir. 1993)).

³⁵ *Fish v. St. Cloud State Univ.*, 295 F.3d 849, 852 (8th Cir. 2002) (emphasis added). *Accord*, e.g., *Urethane*, 2016 WL 4060156, at *4 (“[T]he amount involved and the results obtained . . . may be given greater weight when, as in this case, the trial judge determines that the recovery was highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class”) (cleaned up); *Lucken Family Ltd. P’ship, LLLP v. Ultra Resources, Inc.*, No. 09-cv-01543-REB-KMT, 2010 WL 5387559, at *3 (D. Colo. Dec. 22, 2010) (“[i]n a common fund case, the greatest weight should be given to the monetary results achieved for the benefit of the class.”). See also *Keil v. McCoy*, 862 F.3d 685, 697 (8th Cir. 2017) (noting the “substantial and immediate benefits” the settlement conferred on class members); *In re CenturyLink Sales Practices & Sec. Litig.*, MDL No. 17-2795 (MJD/KMM), at *32 (D. Minn. Dec. 4, 2020) (noting the “significant benefit” of the monetary and non-monetary relief obtained by the settlement).

hours to this litigation, and they expect to devote at least an additional 1,888 hours in the future in implementing the settlement. Thus, this is not a case in which class counsel was able to obtain the settlement with a minimum amount of work, thereby warranting a lower percentage of the recovery. To the contrary, the amount of work expended was significant and necessary.

ii. Novelty and Difficulty of the Questions

44. Substantial attorneys' fees are justified when the legal issues are particularly complex.³⁶ For example, the district court in the *Urethane Antitrust* litigation relied heavily on the fact that it "was an extremely difficult and complex case . . . with significant disputed issues arising at [various stages of the litigation]."³⁷ In awarding attorneys' fees of 33⅓ percent, the court emphasized that "[l]iability on these claims was far from certain, and thus the case presented a great deal of risk" to class counsel.³⁸ In the same vein, in *Cullen v. Whitman Medical Corp.*, the court noted, in awarding attorneys' fees of 33⅓ percent, that "[v]irtually nothing about this case was simplistic . . . [and that] both the legal theories and litigation process were complex."³⁹ Here, as discussed below, the issues in this litigation were complex and contentious.

³⁶ *In re RFC & Rescap Liquidating Trust Action*, 399 F. Supp. 3d 827, 831 (D. Minn. 2019) (noting the complex legal issues involved and many complicated defenses raised by the defendants).

³⁷ *Urethane*, 2016 WL 4060156, at *5.

³⁸ *Id.* at *4.

³⁹ 197 F.R.D. 136, 148 (E.D. Pa. 2000). *Accord, e.g., In re Resideo Techs., Inc. Sec. Litig.*, 19-cv-2863 (WMW/BRT), at *13 (D. Minn. Mar. 24, 2022) (noting that courts in the Eighth Circuit "have recognized that "securities claims proceeding as a class action present complex and novel issues" (cleaned up); *Buettgen v. Harless*, No. 3:09-cv-00791-K, 2013 WL 12303194, at *2 (N.D. Tex. Nov. 13, 2013) (emphasizing in awarding attorneys' fees that the case involved "particularly complex issues of law" and "numerous rounds of complicated briefing"); *In re Lease*

a) Difficult Legal Claims and Factual Issues

45. It is fundamental that the existence of difficult legal and factual issues can warrant substantial fees.⁴⁰ And courts have recognized that many class actions “are inherently complex.”⁴¹ For example, in awarding attorneys’ fees of more than 30 percent in *Allapattah Services, Inc. v. Exxon Corp.*, the district court emphasized that “[t]he factual and legal framework out of which this case arose made it an extraordinarily difficult case.”⁴² Similarly, in *In re Resideo Techs., Inc. Securities Litigation*, the district court noted that the case “involved significant legal and factual issues” and that “[t]he difficulty of [those] issues supports the requested percentage-based award of attorneys’ fees.”⁴³ Likewise, in *Phillips v. Caliber Home Loans Inc.*, the court reasoned that “[t]he novelty and difficulty” of the case, which involved multiple complex

Oil Antitrust Litig. (No. II), 186 F.R.D. 403, 445 (S.D. Tex. 1999) (relying on the existence of “difficult questions” of law in awarding “an above-average recovery”).

⁴⁰ See, e.g., *In re Life Time Fitness Inc., Tel. Consumer Prot. Act Litig.*, 847 F.3d 619, 623 (8th Cir. 2017) (noting that the lawsuit presented difficult legal questions); *In re CenturyLink Sales Practices & Sec. Litig.*, MDL No. 17-2795 (MJD/KMM), at *34 (D. Minn. Dec. 4, 2020) (noting that “challenging legal and factual issues [faced by class counsel] in pursuing nationwide claims and relief” supported the requested 32.5 percent fee award); *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1115 (D. Kan. 2018) (noting that there were “seriously disputed questions of law and fact” in awarding class counsel one-third of the settlement fund).

⁴¹ *Phillips v. Caliber Home Loans Inc.*, 19-cv-2711 (WMW/LIB), at *14 (D. Minn. Mar. 21, 2022) (citation omitted); accord, e.g., *In re Resideo Techs., Inc. Sec. Litig.*, 19-cv-2863 (WMW/BRT), at *13 (D. Minn. Mar. 24, 2022) (same); *Marshall v. Green Giant Co.*, 942 F.2d 539, 549 (8th Cir. 1991) (“It goes without saying that class actions are very complex and represent a significant drain on the court in terms of time and management.”); *In re CenturyLink Sales Practices & Sec. Litig.*, MDL No. 17-2795 (MJD/KMM), at *26 (D. Minn. July 21, 2021) (noting that “securities claims proceeding as a class action present complex and novel issues”) (cleaned up);

⁴² 454 F. Supp. 2d 1185, 1206 (S.D. Fla. 2006).

⁴³ 19-cv-2863 (WMW/BRT), at *13 (D. Minn. Mar. 24, 2022).

questions of state and federal law, “support[ed] the requested [of 33⅓ percent] award of attorneys’ fees.”⁴⁴ Here, beyond the inherent complexity of class actions generally, there were a number of difficult legal and factual issues in this case. I detail some of them below.

46. First, there were difficult issues of contract interpretation on both the COI Charge and Expense Charge claims. *See* Siegel Att. Fees Decl. ¶ 18. Some courts denied State Farm’s summary judgment motions on those claims, while other courts granted summary judgment on one or both of those claims.⁴⁵ For example, as noted above, on September 6, 2022, Judge Barbara Rothstein dismissed plaintiff’s claims in their entirety. Importantly, Judge Rothstein’s ruling was the most recent one on the COI Charge claim, and she acknowledged that some courts had denied State Farm’s dispositive motions. However, after carefully reviewing the prior decisions as a whole, she dismissed the suit in its entirety. I would further note that, prior to the Eighth Circuit’s opinion in *Vogt* favorable to policyholders (which class counsel was directly responsible for obtaining), appellate precedent strongly favored State Farm on the issue of contract interpretation. The most significant opinions were by the Seventh Circuit in *Norem v. Lincoln Ben. Life Co.*, 737 F.3d 1145 (7th Cir. 2013), and *Mai Nhia Thao v. Midland Nat’l Life Ins. Co.*, 549 F. App’x 534 (7th Cir. 2013), which rejected similar COI Charge claims against two different insurance

⁴⁴ 19-cv-2711 (WMW/LIB), at *14 (D. Minn. Mar. 21, 2022); *accord, e.g., In re Heritage Bond Litig.*, No. 02-ML-01475-DT, 2005 WL 1594403, at *20–21 (C.D. Cal. June 10, 2005); *Kelly v. Phiten USA, Inc.*, 277 F.R.D. 564, 570 (S.D. Iowa 2011) (noting the “complexity and expense of further litigation” in awarding class counsel approximately 33% of the settlement fund); *Cullen*, 197 F.R.D. at 148 (relying on factual complexity and voluminous discovery in awarding fees); *Eashoo v. Iovate Health Sciences U.S.A., Inc.*, No. 15-cv-01726-BRO (PJWx), 2016 WL 6205785, at *10 (C.D. Cal. Apr. 5, 2016) (similar); *Schwartz v. TXU Corp.*, No. 3:02-cv-02243-K, 2005 WL 3148350, at *29 (N.D. Tex. Nov. 8, 2005) (similar).

⁴⁵ *See* Doc. 47 at 14–58 (detailed case-by-case discussion of dispositive motions rulings).

companies. During the litigation, the Eleventh Circuit also issued an opinion favoring the insurance company on a claim under a COI Charge provision somewhat similar to the one in the Policies here.⁴⁶ Class counsel ably navigated the adverse precedents such that *none* of the courts in these cases adopted the rationales in *Norem*, *Thao*, or *Slam Dunk*. The difficulty of the interpretative issues is also demonstrated by State Farm’s evolving arguments. For example, in *Bally*, Judge Charles Breyer initially agreed with class counsel’s interpretation that the Policies did not permit State Farm to load expenses and profit in the COI Charge, denying State Farm’s motion for summary judgment.⁴⁷ Although ruling for plaintiffs, even Judge Breyer appeared to consider this a close call, certifying the order for interlocutory appeal to the Ninth Circuit. However, class counsel persuaded the Ninth Circuit to refuse to accept interlocutory review. Nonetheless, State Farm continued to press the issue of policy interpretation even in *Bally*. It identified a new argument and a different way to view the language in the Policies that, it contended, permitted it to load expenses and profit in the COI Charge, an interpretation that Judge Breyer later accepted in granting State Farm’s second motion for summary judgment on the COI Charge claim.⁴⁸ Class counsel, however, persuaded Judge Breyer to grant the class summary judgment on liability as to the Expense Charge claim.⁴⁹ Following Judge Breyer’s ruling, judges in the Arizona (*McClure*), Minnesota (*Jaunich*), and Texas (*Page*) cases all rejected State Farm’s

⁴⁶ *Slam Dunk I, LLC v. Conn. Gen. Life Ins. Co.*, 853 F. App’x 451 (11th Cir. 2021).

⁴⁷ *Bally v. State Farm Life Ins. Co.*, No. 18-CV-04954-CRB, 2019 WL 3891149, at *1 (N.D. Cal. Aug. 19, 2019).

⁴⁸ *Bally v. State Farm Life Ins. Co.*, 536 F. Supp. 3d 495 (N.D. Cal. 2021).

⁴⁹ *Bally v. State Farm Life Ins. Co.*, 587 F. Supp. 3d 996 (N.D. Cal. 2022).

policy interpretation. It is clear from these orders that the issue of policy interpretation was both nuanced and difficult. Notably, the litigation did not become any less challenging following the Eighth Circuit’s opinion in *Vogt*, and class counsel did not wait for that appellate ruling before filing several of the cases settled here. They undertook to represent the class members in *Bally*, *Whitman*, and *McClure* even when it was quite possible that the Eighth Circuit would eventually agree with State Farm.

47. Second, various courts also rejected plaintiffs’ conversion claim.⁵⁰ In *Whitman*, for example, Judge Rothstein found that the conversion claim failed because it was “derivative” of the failed breach of contract claims.⁵¹ But even courts that denied summary judgment to State Farm on one or both of the breach of contract claims found it appropriate to grant summary judgment to State Farm on conversion.⁵² For instance, Judge Susan Brnovich (D. Ariz) denied State Farm’s summary judgment motion with respect to both the COI and Expense Charge claims but granted State Farm’s motion with respect to conversion.⁵³ She concluded that the claim was barred by the economic loss doctrine because “Plaintiff has alleged no tortious conduct apart from breach of the Policy language. Essentially, plaintiff’s conversion claim is based upon exactly the

⁵⁰ Doc. 47 at 14–58.

⁵¹ See *Whitman v. State Farm Ins. Co.*, No. 3:19-cv-06025-BJR, 2022 U.S. Dist. LEXIS 160432, at *18 (W.D. Wash. Sep. 6, 2022).

⁵² See e.g., *Vogt v. State Farm Life Ins. Co.*, No. 2:16-cv-04170-NKL, 2018 WL 1747336 at *9 (W.D. Mo. Apr. 10, 2018); *Page v. State Farm Life Insurance Co.*, 2022 WL 718789 (W.D. Tex. Mar. 10, 2022).

⁵³ *McClure v. State Farm Life Ins. Co.*, No. CV-20-01389-PHX-SMB, 2022 WL 2275665 (D. Ariz. June 23, 2022).

same conduct as the breach of contract claims in Counts I and II.”⁵⁴ Critically, Judge Brnovich agreed with State Farm that “because Plaintiff’s conversion claim fails, his punitive damages claim likewise fails.”⁵⁵ With the courts’ (virtually) uniform rejection of the conversion claims, plaintiffs and class members could not realistically expect to be successful in seeking punitive damages for a nationwide class, either in a trial context or as an element of a classwide settlement.⁵⁶

48. Third, the cases posed challenging statute of limitations issues. *See* Siegel Att. Fees Decl. ¶ 20. For instance, Judge Paul Magnuson (D. Minn.) ruled that Minnesota did not have a discovery rule but instead followed the more stringent occurrence rule. Although fraudulent concealment could toll the statute of limitations under an occurrence rule, Judge Magnuson ruled that plaintiff had failed to come forward with evidence supporting such a contention.⁵⁷ As a result, Judge Magnuson ruled that, under the six-year limitations period, any claim arising before July 2014 was time barred.⁵⁸

⁵⁴ *Id.* at *8.

⁵⁵ *Id.*

⁵⁶ In *Vogt*, the court permitted the conversion claim to go to the jury, but it nonetheless granted summary judgment on the issue of punitive damages in favor of State Farm. The court found that State Farm’s conduct was not sufficiently egregious to justify submitting the issue of punitive damages to the jury. Given that damages for the conversion claim were the same as for breach of contract, the conversion claim added little to no additional value to the class members’ claims.

⁵⁷ *Jaunich v. State Farm Life Ins. Co.*, No. CV 20-1567 (PAM/JFD), 2022 WL 2318560, at *4 (D. Minn. June 28, 2022).

⁵⁸ *Id.*

49. Even in jurisdictions that have adopted a discovery rule, plaintiffs were not home free. Thus, while Judge Brnovich denied State Farm’s motion for summary judgment on statute of limitations grounds, plaintiffs were still faced with having to establish at trial that they could not have discovered the alleged breach while their policies were active.⁵⁹ There was “also a question of fact as to when Plaintiff’s causes of action accrued.”⁶⁰ Thus, avoiding an adverse summary judgment ruling was by no means a guarantee that the claims would ultimately be deemed timely. In sum, there were myriad complex legal and factual issues here.

b) Difficult Expert Issues

50. The existence of hotly contested issues under *Daubert v. Merrell Dow Pharmaceuticals*⁶¹ can warrant substantial fees. For example, in approving a percentage-based award in the *CenturyLink Sales Practices & Securities Litigation*, the court noted that continued litigation, including *Daubert* motions, “would involve considerable time and expense.”⁶² Similarly, in the *Flonase Antitrust Litigation*, in awarding 33⅓ percent of the settlement fund as attorneys’ fees, the court relied upon the fact that class counsel had litigated a number of hotly

⁵⁹ *McClure*, 2022 WL 2275665, at *9.

⁶⁰ *Id.*

⁶¹ 509 U.S. 579 (U.S. 1993).

⁶² MDL No. 17-2795 (MJD/KMM), 2021 U.S. Dist. LEXIS 135880, at *17 (D. Minn. July 21, 2021).

contested *Daubert* challenges.⁶³ Likewise, in *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, the court cited “multiple *Daubert* challenges” in awarding attorneys’ fees of 33⅓ percent.⁶⁴

51. Here, as noted, substantial briefing and analysis was necessitated by State Farm’s argument that plaintiffs’ expert, Scott Witt, did not satisfy the standards of *Daubert*.⁶⁵ Indeed, class counsel advises me that State Farm filed *ten Daubert* motions in the various cases and deposed Mr. Witt *eleven* times. Moreover, the expert issues raised by State Farm were complicated. For example, in *Bally*, Judge Breyer (N.D. Cal.) devoted three pages to analyzing the admissibility of Mr. Witt’s damages report.⁶⁶ Although he ultimately refused to strike the report, he had to review and analyze State Farm’s arguments that: (1) Mr. Witt did not use actuarial judgment; (2) Mr. Witt’s analysis failed to comply with Actuarial Standards of Practice (ASOP); (3) Mr. Witt used “blended” mortality rates that did not differentiate in pricing among tobacco users and non-users; (4) he improperly used “unpooled” rates, which differed based on the age of the particular policy; (5) he used a model that charged a higher rate than certain

⁶³ *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 106 (E.D. Pa. 2013).

⁶⁴ No. 1:04-cv-3066-JEC, 2012 WL 12540344, at *3 (N.D. Ga. Oct. 26, 2012). *Accord*, e.g., *Kleen Prods. LLC v. Int’l Paper Co.*, No. 1:10-cv-05711, 2017 WL 5247928, at *5 (N.D. Ill. Oct. 17, 2017) (relying on “substantial motion practice, including . . . motions to exclude expert testimony under *Daubert*” in awarding fees); *Cook v. Rockwell Int’l Corp.*, No. 90-cv-00181-JLK, 2017 WL 5076498, at *3 (D. Colo. Apr. 28, 2017) (relying on multiple *Daubert* motions in awarding fees); *Buettgen*, 2013 WL 12303194, at *2 (relying on contentious *Daubert* motions in awarding fees); *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1193, 1232 (S.D. Fla. 2006) (noting “week-long *Daubert* evidentiary hearing” in awarding fees).

⁶⁵ 509 U.S. 579 (1993).

⁶⁶ *Bally v. State Farm Life Ins. Co.*, 335 F.R.D. 288, 297–300 (N.D. Cal. 2020), Doc. 122 at 6–13.

policyholders were actually charged, and thus failed to separate harmed class members from unharmed ones; and (6) his model did not account for the fact that some class members suffered no damages.⁶⁷

52. Even after prevailing on State Farm’s *Daubert* challenges, class counsel had a difficult task ahead of them in persuading a jury to adopt Mr. Witt’s damages opinions. Although they had prevailed at the *Vogt* trial, State Farm hired entirely new experts for the subsequent cases, and those experts were highly critical of Mr. Witt’s analyses. *See* Siegel Att. Fees Decl. ¶ 14. These new experts included a Ph.D. economist, a former state insurance commissioner and executive of the National Association of Insurance Commissioners, an actuary (like Mr. Witt), and a consumer behavior expert. These experts were all well credentialed and, according to class counsel, highly paid—with State Farm having paid *over \$4.6 million* to these experts at the time of their depositions. Their criticisms covered a broad array of subject areas and attacked damages on several levels, including opinions that policyholders suffered no damages in the event of a breach.

c) Hotly Contested Class Certification Issues

53. In justifying substantial attorneys’ fees, a number of courts have relied on the fact that class counsel litigated difficult class certification issues. For example, in awarding class counsel a fee of approximately 33 percent of the settlement fund, the court in *Kelly v. Phiten USA, Inc.* noted that the class “would have faced challenges by the Defendant regarding their eligibility for class certification due to choice of law limitations, diversity complications, and arbitration

⁶⁷ *Id.*

agreements.”⁶⁸ Similarly, in *In re CenturyLink Sales Practices & Securities Litigation*, where the court approved class counsel’s 32.5 percent fee request, the court noted that “[if] the case had survived to the class certification stage, there would have been strong arguments against class certification . . . [and class counsel] would have had to expend considerable additional resources on discovery, expert analysis, [and] a highly contested motion for class certification.”⁶⁹ In *Montague v. Dixie National Life Insurance*, the court reasoned that the “hotly contested” issue of class certification “provide[d] support for a 33 percent fee award.”⁷⁰ Likewise, in awarding attorneys’ fees of 33⅓ percent of the \$586 million settlement fund in the *Initial Public Offering Securities Litigation*, the court emphasized that “class counsel briefed and argued three hotly contested class certification motions.”⁷¹ And in *Syngenta*, where “class certification was not assured” and the defendant’s “experienced and well-funded top-shelf counsel . . . contested every issue,” class counsel were awarded 33⅓ percent of a \$1.5 billion settlement fund.⁷² Likewise, in *In re Urethane*, where many issues—including the issue of class certification—were “significant”

⁶⁸ 277 F.R.D. 564, 570 (S.D. Iowa 2011).

⁶⁹ No. CV 17-2832, 2020 WL 7133805, at *12 (D. Minn. Dec. 4, 2020).

⁷⁰ No. 3:09-00687-JFA, 2011 WL 3626541, at *3 (D.S.C. Aug. 17, 2011).

⁷¹ *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 508 (S.D.N.Y. 2009). *Accord*, e.g., *In re Schering-Plough Corp. Enhance Sec. Litig.*, Nos. 08-397 & 08-2177 (DMC) (JAD), 2013 WL 5505744, at *26 (D.N.J. Oct. 1, 2013) (relying on “unusual class certification issues” in awarding fees); *Cullen*, 197 F.R.D. at 148 (relying on contested class certification motions in awarding fees); *Heritage Bond*, 2005 WL 1594403, at *20 (similar).

⁷² *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1112 (D. Kan. 2018).

and “contested quite vigorously,” class counsel were awarded 33⅓ percent of the \$835 million settlement fund.⁷³

54. To be sure, district court decisions in the present litigation consistently certified these State Farm life insurance cases as statewide class actions, given the overarching common issues. Nonetheless, there is no question that class counsel took a serious risk that class certification would be denied or that a previously certified class would later be decertified. State Farm contended that predominance under Rule 23(b)(3) could not be satisfied in these cases because extrinsic evidence was required to interpret the contract and ascertain each class member’s understanding of the terms. State Farm also contended that individualized statute of limitations defenses defeated predominance. Moreover, State Farm argued that plaintiff’s damages model was not supported by admissible expert testimony and that without a valid model, individualized damages issues predominated. In addition, State Farm argued that there was an intra-class conflict because the model adopted by plaintiffs’ expert, Mr. Witt, favored short-term policyholders and tobacco users over long-term policyholders and non-tobacco users. State Farm made these arguments in several cases.⁷⁴

55. State Farm also raised several challenges to class certification based on various other theories: that some class members suffered no injury or that there were intra-class conflicts from State Farm’s methodology for calculating COI deductions. It was clear that State Farm considered these arguments to be substantial ones that posed significant risk for plaintiffs. For

⁷³ See *Urethane*, 2016 WL 4060156, at *11.

⁷⁴ See Doc. 47 at 14–32 (summarizing State Farm’s arguments in the various cases).

example, in *Vogt*, State Farm litigated those arguments all the way to the United States Supreme Court, asking the Court to grant certiorari (accompanied by impressive counsel and amici).⁷⁵ State Farm’s efforts were unsuccessful: It did not prevail in opposing class certification or challenging it under Rule 23(f) or at final judgment, and it was likewise unsuccessful in obtaining certiorari. Nonetheless, State Farm continued to raise these arguments in the subsequent cases—resulting in seven fully briefed class certifications motions and a motion for decertification, with State Farm seeking Federal Rule 23(f) review of class certification orders three times and then cross appealing class certification in *Whitman*. State Farm obviously understood that these class certification rulings posed a grave threat, and they repeatedly and vigorously raised serious class certification arguments that class counsel had to address. At the same time, class counsel’s success in obtaining and defending class certification undoubtedly placed substantial settlement pressure on State Farm, thereby contributing to the \$325 million settlement.⁷⁶ Undoubtedly, after the \$38.8 million judgment (before application of post-judgment interest) in the Missouri class action, State Farm faced even greater damages in various other states. In fact, I believe it was a smart tactical move for class counsel to file the multi-state *Rogowski* case after obtaining such an impressive array of

⁷⁵ As noted (¶ 17), I have considered that class counsel was paid for their work in the *Vogt* case, including the work spent defending class certification on appeal. Nonetheless, that work was critical to the settlement class. In particular, if the Supreme Court had granted review and reversed class certification in *Vogt*, it would have imperiled class certification in every case. Moreover, there is little doubt that if class counsel had obtained another class judgment, State Farm would have made another attempt at Supreme Court review.

⁷⁶ See, e.g., *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 475 (2013) (noting the “[s]ettlement pressure exerted by class certification”); *In re Zurn Pex Plumbing Prods. Liab. Litig.*, 644 F.3d 604, 629 (8th Cir. 2011) (noting that “many defendants face substantial settlement pressures as a result of class certification” (citation omitted)).

victories on class certification in the individual state class actions. That strategy undoubtedly put great pressure on State Farm, which understood that it would face a large, multi-state class in the very district and circuit where it had lost the *Vogt* case. As a result of class counsel’s multi-jurisdictional strategy, by the time State Farm might have received a favorable appellate ruling by some court on class certification, it potentially would have incurred other adverse jury verdicts even larger than the Missouri verdict. Thus, the class benefited enormously from class counsel’s efforts in obtaining—and defending on appeal—class certification in the face of numerous substantial arguments by State Farm.

d) Contested Trial

56. Because relatively few class actions go to trial,⁷⁷ courts reviewing attorneys’ fee requests justifiably give significant weight, when applicable, to the fact that a contested trial occurred. For example, in its order awarding attorneys’ fees in the *Deepwater Horizon Litigation*, the court noted that class counsel “did something that rarely happens in class actions: they actually went to trial.”⁷⁸ The court emphasized that the “massive two-phase trial effort” weighed in favor of the fees requested by class counsel.⁷⁹ Similarly, in *Allapattah*, the district court emphasized that the settlement was reached only after class counsel succeeded at trial, noting that “[c]lass

⁷⁷ See, e.g., *Hughes v. Kore of Ind. Enter., Inc.*, 731 F.3d 672, 676 (7th Cir. 2013) (noting that it is “the rare case in which a class action not dismissed pretrial goes to trial rather than being settled”); *Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1299 (11th Cir. 1999) (“Rarely do class action litigations proceed to trial.”); Robert H. Klonoff, *Class Actions in the Year 2026: A Prognosis*, 65 EMORY L.J. 1569, 1642 (2016) (indicating that “settlement is still the norm”).

⁷⁸ *In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, No. 2:10-md-02179-CJB, 2016 WL 6215974, at *18 (E.D. La. Oct. 25, 2016).

⁷⁹ *Id.*

counsel . . . faced a potential catastrophic risk in the event the case was lost at trial.”⁸⁰ In *Urethane*, the court relied heavily in its fee award on the impressive jury verdict obtained by class counsel.⁸¹ The court emphasized that “the case was not settled pretrial” but rather was litigated before a jury, resulting in a verdict of over \$400 million—an “incredible success on the merits.”⁸²

57. In the present case, a compelling justification for the fee award sought is that class counsel conducted a full trial on the merits in *Vogt*. That trial, involving a Missouri class, resulted in a verdict of \$34.3 million in compensatory damages, with the jury deliberating for just over two hours. State Farm vigorously disputed the class’s claims at trial and brought in an experienced trial team of attorneys from two law firms. I have no doubt that, had the Missouri

⁸⁰ *Allapattah*, 454 F. Supp. 2d at 1203.

⁸¹ *Urethane*, 2016 WL 4060156, at *4–7.

⁸² *Id.* at *4. *Accord, e.g., Brady v. Air Line Pilots Ass’n*, 627 F. App’x 142, 144–45 (3d Cir. 2015) (emphasizing that “Class Counsel conducted a five-week liability trial that resulted in a jury verdict in favor of the class” in upholding district court’s 30 percent attorneys’ fee award); *In re Syngenta*, 357 F. Supp. at 1115 (noting that “litigation was extensive and exhaustive . . . and included a trial and a plaintiffs’ verdict”); *In re Apollo Grp. Inc. Sec. Litig.*, No. 04-cv-02147-PHX-JAT, 2012 WL 1378677 (D. Ariz. Apr. 20, 2012) (awarding attorneys’ fees of 33½ percent of \$145 million fund based in large part on favorable jury verdict secured by class counsel, and noting: “[S]ecurities class actions rarely proceed to trial . . . [and] there was a great risk that this case would not result in a favorable verdict after trial.”); *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 768 F. Supp. 912, 931–32 (D.P.R. 1991) (relying on multi-phase trial in setting aside total attorneys’ fees of \$68 million out of \$220 million fund, or 30.9 percent), *rev’d on other grounds*, 56 F.3d 295 (1st Cir. 1995). Indeed, courts give substantial weight in awarding fees to the fact that a case was *close* to going to trial. *See, e.g., Fleisher v. Phoenix Life Ins. Co.*, Nos. 11-cv-8405(CM), 14-cv-8714(CM), 2015 WL 10847814, at *12–13 (S.D.N.Y. Sept. 9, 2015) (noting, in awarding 33½ percent of cash settlement fund, that “the litigation was hard-fought” and a settlement was reached “on the eve of trial” and after an “all-day mock trial”); *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 99, 104, 106 (E.D. Pa. 2013) (noting that class counsel “had completed significant preparation for trial” in awarding attorneys’ fees of 33½ percent); *Columbus Drywall & Insulation*, 2012 WL 12540344, at *3 (emphasizing that “[t]he case settled only within 48 hours of trial” in awarding attorneys’ fees of 33½ percent).

class lost the trial, class counsel’s ability to negotiate a settlement anywhere near the magnitude of \$325 million would have vanished. In my opinion, the fact that class counsel achieved a major jury verdict against such formidable opposition in a closely related Missouri class action was critical in paving the way for the substantial global settlement. I recognize that *Vogt* is not part of the nationwide class settlement, and I would endorse the fee proposal even without considering it; but as I explained (¶ 17), in my opinion, it is inextricably intertwined with the nationwide class settlement.

e) Absence of Government Litigation

58. In some cases, private counsel are assisted by the existence of parallel government litigation. Such government litigation—which may involve both criminal actions and civil enforcement—can provide valuable resources and can help uncover underlying wrongdoing. Thus, some courts have noted the heavy involvement of the government in setting awards below what class counsel requested. For example, in reducing class counsel’s fee request in the *AOL Time Warner Securities Litigation*, the court noted that class counsel “benefited to a degree from work performed by others,” including “[p]arallel government investigations.”⁸³ Similarly, in explaining its fee award of only 10 percent in *In re Quantum Health Resources, Inc.*, the court emphasized that “[t]he facts of [the] case weighed heavily in the Class’ favor from the start,

⁸³ *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. 02-cv-05575 (SWK), 2006 WL 3057232, at *17 (S.D.N.Y. Oct. 25, 2006).

largely because the material allegations of the complaint were supported by the unequivocal results of public investigations conducted by [California state agencies].”⁸⁴

59. Conversely, courts have also noted the *absence* of government involvement in approving substantial fee requests. For example, in *In re CenturyLink Sales Practices & Securities Litigation*, the court noted that the plaintiffs “faced a risk of losing” because of “the fact that there was no government investigation regarding [the defendant’s] statements to its investors” and that, therefore, “[p]roving loss causation would have been a significant hurdle.”⁸⁵ Similarly, in *In re Gulf Oil/Cities Services Tender Offer Litigation*, the court emphasized that the case was “not [one] where plaintiffs’ counsel can be cast as jackals to the government’s lion, arriving on the scene after some enforcement or administrative agency has made the kill. [Class counsel] did all the work on their own.”⁸⁶ As the court noted in *Urethane*, the fact that “[class] [c]ounsel had to build this case on their own, *without the help of a government investigation or prosecution*,” weighed in favor of the requested 33⅓ percent fee award.⁸⁷

⁸⁴ 962 F. Supp. 1254, 1259 (C.D. Cal. 1997).

⁸⁵ MDL No. 17-2795 (MJD/KMM), 2021 U.S. Dist. LEXIS 135880, at *17 (D. Minn. July 21, 2021).

⁸⁶ 142 F.R.D. 588, 597 (S.D.N.Y. 1992); *accord, e.g., In re Syngenta*, 357 F. Supp. at 1112 (noting that the case “did not involve a government investigation or prosecution of the defendant, and thus plaintiffs’ counsel were forced to undertake all of the necessary investigation and discovery”).

⁸⁷ *Urethane*, 2016 WL 4060156, at *4 (emphasis added). *Accord, e.g., In re Nat’l Football League Players’ Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1635648, at *7 (E.D. Pa. Apr. 5, 2018) (“This was not a case where government prosecutions laid the groundwork for private litigation. This case required a pioneering effort by Class Counsel.” (citation, internal quotation marks, and brackets omitted)); *Standard Iron Works v. ArcelorMittal*, No. 08-cv-05214, 2014 WL 7781572, at *1 (N.D. Ill. Oct. 22, 2014) (noting, in awarding attorneys’ fees of 33

60. Here, class counsel had no assistance of any kind from insurance regulators, state attorneys general, or any other state or federal officials. Siegel Att. Fees Decl. ¶ 4. In fact, State Farm hired a former state insurance commissioner, who gave the opinion that state regulatory bodies would not have approved the Policies if they had been construed to preclude State Farm from recovering all of its expenses and building a profit margin into the COI Charge, as plaintiffs contended. Here, class counsel bore the entire burden of investigating and proving State Farm’s alleged breach of contract and conversion.

f) No Public Admission of Liability

61. In some instances, class counsel benefit from the fact that the defendant has publicly admitted wrongdoing. Such admissions no doubt make it easier for class counsel to prosecute the claims and negotiate a settlement. For example, in *Quantum Health*, the court emphasized the “significant public admissions by Quantum” in concluding that class counsel did not face “any significant risk” and awarding attorneys’ fees of only 10 percent of the common fund.⁸⁸ Here, State Farm vigorously contested liability prior to entering into the class settlement,

percent, that “Class Counsel initiated and developed this case with no assistance from any prior government investigation or prosecution”); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748–49 (E.D. Pa. 2013) (relying on absence of government investigation); *In re Automotive Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2008 WL 63269, at *5 (E.D. Pa. Jan. 3, 2008) (similar); *Syngenta*, 357 F. Supp. 3d at 1112 (in awarding 33½ percent of \$1.5 billion settlement, relying on the fact “that, unlike some other class actions, this case did not involve a government investigation or prosecution of the defendant, and thus plaintiffs’ counsel were forced to undertake all of the necessary investigation and discovery”).

⁸⁸ 962 F. Supp. 1254, 1259 (C.D. Cal. 1997). *See also, e.g., In re Schering-Plough Corp. Enhance Sec. Litig.*, Nos. 08-397 & 08-2177 (DMC) (JAD), 2013 WL 5505744, at *43 (D.N.J. Oct. 1, 2013) (noting that the litigation “was no easy task for [class counsel] because no Defendant ever admitted wrongdoing”). Additionally, even if the defendant has not publicly admitted wrongdoing, courts have focused on the relative ease of establishing liability in awarding fees

and even today, it still admits no wrongdoing or breach of contract despite its agreement to pay \$325 million.⁸⁹

g) No Public Relations Reason to Settle

62. In some cases, widespread adverse publicity creates a public relations nightmare for a defendant, thus increasing the need for such a defendant to settle on terms favorable to plaintiffs. Examples include the *Deepwater Horizon Litigation*, where BP faced “a torrent of criticism” in the wake of the oil spill disaster;⁹⁰ the *Volkswagen Clean Diesel Litigation*, where Volkswagen’s admission of fraud shook consumer confidence and resulted in “something like a tsunami” of bad press;⁹¹ and the *NFL Concussion Litigation*, where commentators noted that “regular updates from a courtroom had the potential to be a [public relations] nightmare for the NFL, especially because of the possibility of unflattering documents coming to light.”⁹² Here, there were no similar pressures that compelled State Farm to settle. This case has received virtually no media coverage (apart from legal publications that provided updates on case

below those requested by class counsel. For example, the Third Circuit, in rejecting the district court’s fee award in *In re Cendant Corp. Litigation*, emphasized that plaintiffs had “a simple case in terms of liability.” 264 F.3d 201, 221 (3d Cir. 2001).

⁸⁹ See Doc. 47–1, ¶ 11.8 (Settlement Agreement).

⁹⁰ Leon Kaye, *Five Years After Deepwater Horizon, Can BP Repair Its Reputation?*, SUSTAINABLE BRANDS (Feb. 19, 2015), http://www.sustainablebrands.com/news_and_views/marketing_comms/leon_kaye/five_years_after_deepwater_horizon_can_bp_repair_its_reputa.

⁹¹ Danny Hakim, *VW’s Crisis Strategy: Forward, Reverse, U-Turn*, N.Y. TIMES (Feb. 26, 2016), <https://www.nytimes.com/2016/02/28/business/international/vws-crisis-strategy-forward-reverse-u-turn.html>.

⁹² Dan Diamond, *NFL Pays \$765 Million to Settle Concussion Case, Still Wins*, FORBES (Aug. 29, 2013), <https://www.forbes.com/sites/dandiamond/2013/08/29/nfl-pays-765-million-to-settle-concussion-case-still-wins/#67a1d1317e62>.

developments), despite the fact that the allegations involved harm to a predominantly elderly population.

* * *

63. In sum, class counsel faced numerous difficult challenges that favor a substantial fee award. The district court's observations in *Urethane* are equally applicable here:

[Class] counsel achieved an incredible result for the class, in a case with an extreme amount of risk at all stages of the litigation, and they obtained that result because they won what is reported to be one of the largest verdicts of its kind in United States history. Counsel had to build this case on their own, without the help of a governmental investigation or prosecution, . . . and they toiled for many years, at great expense to themselves, with a very real risk that they would not recover anything.⁹³

iii. Skill Requisite to Perform the Legal Service Properly

64. A high level of skill was necessary to litigate and settle these cases. As noted above, this case involved a number of difficult legal and factual issues (¶¶ 45–49), and numerous other challenges (¶¶ 50–62).

a) Plaintiffs' Team

65. Plaintiffs' team needed to be at the top of their game in trial skills, legal research and analysis, class certification, knowledge of technical and complicated insurance issues, and appellate practice.

66. Thus, it is not surprising that the team representing the class included some of the country's most accomplished class action plaintiff lawyers. Team members have received

⁹³ *Urethane*, 2016 WL 4060156, at *6.

recognition as the “The Best Lawyers in America,”⁹⁴ “Super Lawyers,”⁹⁵ and “Rising Stars.”⁹⁶ Many have held prominent leadership roles in other major class actions and MDL cases.⁹⁷ And they came to this litigation with years of experience suing insurance companies for overcharging

⁹⁴ The Best Lawyers in America are selected based on a peer-review process “designed to capture, as accurately as possible, the consensus opinion of leading lawyers about the professional abilities of their colleagues within the same geographical area and legal practice area.” *Methodology Process*, BEST LAWYERS, <https://www.bestlawyers.com/methodology> (last visited Feb. 6, 2023). Attorneys on plaintiffs’ team who have been named to The Best Lawyers in America include Norman Siegel, *see Attorneys*, STUEVE SIEGEL HANSON, <https://www.stuevesiegel.com/about-attorneys> (last visited Feb. 6, 2023).

⁹⁵ Super Lawyers are selected each year based on an extensive research and peer-evaluation process. They represent the top five percent of attorneys in each state and practice area. *See Selection Process Detail*, SUPER LAWYERS, https://www.superlawyers.com/about/selection_process_detail.html (last visited Feb. 6, 2023). Attorneys on plaintiffs’ team who have been selected as Super Lawyers include Norman Siegel, Bradley Wilders, and Lindsay Todd Perkins of Stueve Siegel Hanson and Matthew Lytle of Miller Schirger. *See Attorneys*, STUEVE SIEGEL HANSON, <http://www.stuevesiegel.com/ssh/about-us/attorneys.html> (last visited Feb. 6, 2023); *Attorneys*, MILLER SCHIRGER, <https://www.millerschirger.com/docs/attorneys/contact.php> (last visited Feb. 6, 2023).

⁹⁶ Attorneys under 40 years of age or in practice for ten years or less are eligible to be designated Rising Stars if they have not been designated Super Lawyers. The Rising Stars selection process is similarly based on independent research and a peer-evaluation process. Only 2.5 percent of eligible lawyers are designated Rising Stars. *See The Rising Stars Selection Process*, SUPER LAWYERS, https://www.superlawyers.com/about/selection_process_detail.html (last visited Feb. 6, 2023). Attorneys on plaintiffs’ team who have been selected as Rising Stars include Matthew Lytle and Joseph Feierabend of Miller Schirger. Doc. 47-4 at 7, 24. Attorneys Lindsay Perkins and Ethan Lange have also been Rising Stars. *See Attorneys*, STUEVE SIEGEL HANSON, <http://www.stuevesiegel.com/ssh/about-us/attorneys.html> (last visited Feb. 6, 2023).

⁹⁷ For example, Norman Siegel of Stueve Siegel Hanson has served as lead counsel in the *In Re: Equifax Data Breach Litigation*, the *Home Depot Data Breach Litigation*, the *Target Data Breach MDL*, and *In Re: Capital One Customer Data Security Litigation*. *See Norman E. Siegel*, STUEVE SIEGEL HANSON, <http://www.stuevesiegel.com/attorney/Siegel> (last visited Feb. 6, 2023). Numerous other examples could be cited.

universal life insurance policy owners.⁹⁸ These are, in short, some of the country's premier complex litigation attorneys, who also brought major insurance expertise to the table.

67. Stueve Siegel Hanson has significant experience in major class actions.⁹⁹ The firm also has significant experience in MDL litigation.¹⁰⁰ Through its complex litigation work, Stueve Siegel Hanson has secured billions of dollars in relief for its consumer clients.¹⁰¹

68. The Stueve Siegel attorneys who played a major role in this litigation have impressive backgrounds. For example, Norman Siegel, a former Assistant Attorney General at the Missouri Attorney General's Office, has obtained billions of dollars in settlements for his clients, has won multi-million dollar jury verdicts, and has been selected to serve as lead counsel in several of the largest data breach cases litigated to date. Siegel was named among the "500 Leading Plaintiffs' Lawyers in America" by Lawdragon, Best Lawyers named him as a 2020

⁹⁸ Doc. 47-2, ¶ 5 (Siegel Declaration).

⁹⁹ See *Consumer Protection*, STUEVE SIEGEL HANSON, <https://www.stuevesiegel.com/practices-consumer-protection> (last visited Feb. 6, 2023); *Investigating Life Insurance "Cost of Insurance" Rate Increases and Overcharges*, STUEVE SIEGEL HANSON, https://www.stuevesiegel.com/what-investigations-cost_of_insurance (last visited Feb. 6, 2023).

¹⁰⁰ See, e.g., *Norman Siegel*, STUEVE SIEGEL HANSON, <https://www.stuevesiegel.com/attorneys-Siegel> (last visited Feb. 6, 2023); *Barrett Vahle*, STUEVE SIEGEL HANSON, <https://www.stuevesiegel.com/attorneys-Vahle> (last visited Feb. 6, 2023); *Todd Hilton*, STUEVE SIEGEL HANSON, <https://www.stuevesiegel.com/attorneys-Hilton> (last visited Feb. 6, 2023).

¹⁰¹ See *Consumer Protection*, STUEVE SIEGEL HANSON, <https://www.stuevesiegel.com/practices-consumer-protection> (last visited Feb. 6, 2023).

“Lawyer of the Year,” and Law360 named him a “Titan of the Plaintiff’s Bar.”¹⁰² Bradley Wilders clerked for Judge John Gibson of the U.S. Court of Appeals for the Eighth Circuit, was a critical part of the team that achieved a \$217.7 million judgment against a manufacturer of corn seed, has served as a special master in federal litigation, and has been named among Missouri and Kansas “Super Lawyers.”¹⁰³ Lindsay Todd Perkins clerked for Judge Duane Benton of the U.S. Court of Appeals for the Eighth Circuit, served on the trial team in *Vogt*, has been involved in obtaining multiple multi-million dollar settlements, was recognized as a 2020 “Rising Star” by Law360, received an Up & Coming award in 2020 by Missouri Lawyers Weekly, and was named among Missouri and Kansas “Super Lawyers” in 2022.¹⁰⁴

69. Miller Schirger similarly has skilled trial lawyers with significant experience in complex litigation, including insurance litigation.¹⁰⁵ The firm has been involved in a multitude of class action settlements, including nationwide settlements and mega-fund settlements.¹⁰⁶ In 2016, Miller Schirger, along with Stueve Siegel Hanson, obtained a \$2.25 billion nationwide class action settlement against The Lincoln National Life Insurance Company over alleged life insurance

¹⁰² See *Norman Siegel*, STUEVE SIEGEL HANSON, <https://www.stuevesiegel.com/attorneys-Siegel> (last visited Feb. 6, 2023).

¹⁰³ See *Bradley T. Wilders*, STUEVE SIEGEL HANSON, <https://www.stuevesiegel.com/attorneys-Wilders> (last visited Feb. 6, 2023).

¹⁰⁴ See *Lindsay Todd Perkins*, STUEVE SIEGEL HANSON, <https://www.stuevesiegel.com/attorneys-Perkins> (last visited Feb. 6, 2023).

¹⁰⁵ See *Firm Profile*, MILLER SCHIRGER, <https://www.millerschirger.com/docs/Firm-Profile/contact.php> (last visited Feb. 6, 2023).

¹⁰⁶ See *Results*, MILLER SCHIRGER, <https://www.millerschirger.com/docs/results.php> (last visited Feb. 6, 2023).

policy overcharges.¹⁰⁷ And, more recently, Miller Schirger, along with Stueve Siegel Hanson, settled a nationwide life insurance class action against USAA Life Insurance Company for \$90 million.¹⁰⁸

70. The specific Miller Schirger attorneys who played a major role in this litigation have impressive backgrounds. For example, John Schirger has thirty years of litigation experience, including extensive experience in class action and insurance litigation, and he spent roughly three years as in-house counsel in the insurance industry.¹⁰⁹ Schirger has been named a Top 100 Missouri and Kansas Super Lawyer, “Best of the Bar” by the Kansas City Business Journal, and a member of the Power 30 List for Commercial and Consumer Litigation by Missouri Lawyers Media.¹¹⁰ Matthew Lytle has extensive experience representing clients in complicated matters, including class actions and other multi-party actions, has been named a “Super Lawyer” by Missouri and Kansas Super Lawyers, and was named to the 2012 BTI Client Service All-Stars.¹¹¹

¹⁰⁷ See *\$2.25 billion nationwide class action settlement*, MILLER SCHIRGER, <https://www.millerschirger.com/news/2-25-billion-nationwide-class-action-settlement/> (last visited Feb. 6, 2023).

¹⁰⁸ See *USAA Life Insurance Class Action Settles for \$90 Million*, MILLER SCHIRGER, <https://www.millerschirger.com/news/usaa-life-insurance-class-action-settles-for-90-million/> (last visited Feb. 6, 2023).

¹⁰⁹ Doc. 47-4 at 4.

¹¹⁰ See *John J. Schirger*, MILLER SCHIRGER, <https://www.millerschirger.com/docs/John-J-Schirger.php> (last visited Feb. 6, 2023).

¹¹¹ Doc. 47-4 at 5.

b) The Opposition Team

71. An important factor in evaluating a proposed fee award is the “quality and vigor of opposing counsel.”¹¹² For example, in awarding attorneys’ fees of 33⅓ percent in *Dartell v. Tibet Pharmaceuticals, Inc.*, the court noted that “[t]he performance and quality of defense counsel . . . favors a finding that [class counsel] prosecuted this case with skill and efficiency.”¹¹³ Similarly, in awarding attorneys’ fees of 33⅓ percent of the \$510 million fund in the *Initial Public Offering Securities Litigation*, the court noted that class counsel “were pitted against . . . prominent national defense firms,” and it emphasized what an “impressive feat” a favorable settlement was, achieved “against such formidable opponents.”¹¹⁴ Judge Lungstrum likewise awarded 33⅓ percent of a \$1.5 billion settlement, noting that defendants were “represented by experienced and well-funded top-shelf counsel, [who] (quite properly) raised every defense and contested every issue throughout,”¹¹⁵ much like State Farm did here. Numerous other courts have articulated similar reasoning.¹¹⁶

¹¹² *In re Charter Communications, Inc.*, MDL No. 1506 All Cases, Consolidated Case No. 4:02-CV-1186 CAS, at *29 (E.D. Mo. June 30, 2005) (citing *In re IBP, Inc. Sec. Litig.*, 328 F. Supp. 2d 1056, 1064 (D.S.D. 2004)).

¹¹³ No. 14-cv-03620, 2017 WL 2815073, at *9–10 (D.N.J. June 29, 2017) (citations and internal quotation marks omitted).

¹¹⁴ *In re Initial Public Offering Sec. Litig.*, 671 F. Supp. 2d 467, 510 (S.D.N.Y. 2009).

¹¹⁵ *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d at 1112.

¹¹⁶ *See, e.g., Pollard v. Remington Arms Co.*, 320 F.R.D. 198, 198 (W.D. Mo. 2017) (noting that defense counsel was “experienced and skilled”); *In re CenturyLink Sales Practices & Sec. Litig.*, MDL No. 17-2795 (MJD/KMM), at *34 (D. Minn. Dec. 4, 2020) (noting that the defendant and their counsel “mounted a strong defense” and required class counsel to respond to “a flurry of substantial and complex motions.”); *Allapattah*, 454 F. Supp. 2d at 1207 (“Further adding to the

72. Here, extraordinary skill on the part of class counsel was required because State Farm hired some of the country's most prominent and respected defense attorneys. Attorneys from Faegre Drinker Biddle & Reath and Stinson led State Farm's trial team in *Vogt*, and Stinson led the *Vogt* Eighth Circuit appeal. Those lawyers continued to defend State Farm in some or all of the remaining cases. After its losses in *Vogt*, State Farm also brought in two powerhouse law firms as national counsel: Gibson Dunn (over 1700 lawyers) and Alston & Bird (over 820 lawyers).¹¹⁷ By contrast, although assisted by various local lawyers, plaintiffs were represented primarily by two relatively small firms: Stueve Siegel Hanson LLP (26 attorneys) and Miller

difficulty of the case was the quality of Plaintiffs' legal adversaries. Exxon hired some of the most able lawyers and experts in America and spared no expense in doing so."); *Billitteri v. Sec. Am., Inc.*, Nos. 3:09-cv-01568-F & 3:10-cv-01833-F, 2011 WL 3585983, at *7 (N.D. Tex. Aug. 4, 2011) ("Because of the extremely effective work of opposing counsel . . . the skill required here . . . certainly justifies the contemplated [fee] award."); *In re OSB Antitrust Litig.*, No. 06-cv-00826 (D. Pa. Dec. 9, 2008) (Dkt. No. 947) (noting, in awarding attorneys' fees of 33½ percent, that "counsel for Defendants—dozens of extremely distinguished lawyers from across the country—skillfully and vigorously opposed [class counsel]"); *Schwartz v. TXU Corp.*, No. 3:02-cv-2243-K, 2005 WL 3148350, at *29–30 (N.D. Tex. Nov. 8, 2005) ("The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by plaintiffs' attorneys. The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation."); *Walco Investments, Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997) ("Given the quality of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude [than class counsel] could have achieved similar results[.]"); *In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1377 (C.D. Cal. 1977) ("[P]laintiff's attorneys in this class action have been up against established and skilled defense lawyers, and should be compensated accordingly."); *Arenson v. Bd. of Trade*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974) (emphasizing, in awarding attorneys' fees to class counsel, that "attorneys for the defendants represent the cream of the antitrust bar in the United States").

¹¹⁷ State Farm subsequently added Sullivan & Cromwell to the team, but only at the settlement-negotiation state.

Schirger, LLC (five attorneys).¹¹⁸ In terms of sheer resources, this was truly a David versus Goliath scenario.

73. Indeed, as discussed below, State Farm’s law firms were not just large; State Farm specifically cherry-picked some of the most highly regarded litigators within those firms. The remarkable team that State Farm put together for its defense is daunting in its size, strength, reputation, and experience. Focusing on just a handful of the many talented and award-winning lawyers retained by State Farm for this litigation:

- a. In early 2020, State Farm retained Alston & Bird—and in particular, Cari Dawson and Tiffany Powers, among others. Dawson has led numerous high-profile MDLs and class actions in insurance, product liability, and other cases. Her list of high-profile appointments is extremely impressive, and the firm does not exaggerate in describing her as “a go-to lawyer for clients nationwide.”¹¹⁹ Powers is co-lead of the firm’s insurance practice and has vast experience representing major insurance companies in high-stakes class actions.¹²⁰

¹¹⁸ See *Attorneys*, STUEVE SIEGEL HANSON, <https://www.stuevesiegel.com/about-attorneys> (last visited Jan. 20, 2023); *Attorneys*, MILLER SCHIRGER, <https://www.millerschirger.com/docs/attorneys/contact.php> (last visited Feb. 6, 2023).

¹¹⁹ See Cari K. Dawson, ALSTON & BIRD, <https://www.alston.com/en/professionals/d/dawson-cari-k> (last visited Feb. 6, 2023). Dawson has been involved in other high-profile class action cases, including serving as lead class action defense counsel to Porsche Cars North America, Inc. in the Volkswagen “Clean Diesel” MDL and lead class action defense counsel to Toyota in the Toyota Unintended Acceleration MDL. *Id.*

¹²⁰ See Tiffany L. Powers, ALSTON & BIRD, <https://www.alston.com/en/professionals/p/powers-tiffany-l> (last visited Feb. 6, 2023). For example, Powers has represented “top-tier national insurance carriers in putative class actions or mass actions in over 30 states” and served as co-lead counsel in *Hovenkotter v. Safeco Ins. Co. of Illinois*, No. C09-0218JLR (W.D. Wash.), a “landmark case for the insurance industry.” *Id.*

- b. State Farm also retained Kristin Linsley, Deborah Stein, and Scott Edelman of Gibson Dunn to represent them at the district court level. Linsley clerked for Supreme Court Justice Antonin Scalia, was appointed in 2008 to be a Special Master by the Supreme Court, and has a national reputation for achieving results for her clients in high-profile, complex matters.¹²¹ Stein is co-chair of Gibson’s insurance practice group and has vast experience representing major insurance companies in class actions and MDLs.¹²² Edelman has vast experience as a first-chair trial lawyer in numerous high-profile cases.¹²³ Moreover, in its effort to obtain interlocutory appellate review at the federal court of appeals level and certiorari from the U.S. Supreme Court on class certification issues, State Farm brought in one of the country’s leading Supreme Court advocates: Theodore Boutrous, also from Gibson Dunn. Among his many accomplishments, Boutrous briefed and argued the seminal case, *Wal-Mart-Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), on behalf of Wal-Mart, achieving a decisive victory in one of the Supreme Court’s most important and frequently cited class action cases.¹²⁴

¹²¹ See Kirstin A. Linsley, GIBSON DUNN (lasted visited Feb. 1, 2023), <https://www.gibsondunn.com/lawyer/linsley-kristin-a/>.

¹²² See Deborah L. Stein, GIBSON DUNN, <https://www.gibsondunn.com/lawyer/stein-deborah-l/> (last visited Nov. 30, 2022). For example, Stein successfully represented Travelers in “dozens of cases brought by policyholders seeking ‘business interruption’ coverage for financial losses incurred during the COVID-19 pandemic” and has successfully defended insurance companies in cybersecurity class action litigation. *Id.*

¹²³ See Scott A. Edelman, GIBSON DUNN, <https://www.gibsondunn.com/lawyer/edelman-scott-a/> (last visited Dec. 7, 2022). Those trials include *In re Korean Ramen Antitrust Litig.*, where he obtained a complete defense jury verdict and *Intertainment v. Franchise Pictures*, where he obtained a \$122 million jury verdict. *Id.*

¹²⁴ See Theodore J. Boutrous Jr., GIBSON DUNN, <https://www.gibsondunn.com/lawyer/boutrous-jr-theodore-j/> (last visited Feb. 6, 2023). Other Supreme Court cases argued by Boutrous include *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345 (2013), and *Hollingsworth v. Perry*, 133 S. Ct., 2652 (2013). *Id.*

Few attorneys in the country can match the depth and breadth of Boutrous's appellate experience. And were that not enough, Boutrous was able to marshal other powerhouse appellate attorneys to submit amicus briefs in support of certiorari, including David Ogden of Wilmer Hale (representing the American Council of Life Insurers as amicus)¹²⁵ and Adam Unikowsky of Jenner & Block (representing the Chamber of Commerce as amicus).¹²⁶

- c. As noted, State Farm's trial team in *Vogt* was made up of attorneys from the Faegre Drinker and Stinson firms, who continued to represent State Farm in the subsequent cases. One of those attorneys who had a key role throughout all the cases and who argued that crucial Eighth Circuit appeal in *Vogt* was Todd Noteboom of Stinson. Noteboom has extensive class action and insurance expertise.¹²⁷ He is a familiar and respected face in the Eighth Circuit, having briefed and argued numerous cases in that court.¹²⁸

¹²⁵ See David W. Ogden, WILMER HALE, <https://www.wilmerhale.com/en/people/david-ogden> (last visited Feb. 6, 2023). Ogden is a nationally recognized litigator. He clerked for Justice Harry Blackmun and has served as the Deputy Attorney General of the United States (the number 2 position in the Department of Justice) and as Assistant Attorney General for the DOJ's Civil Division.

¹²⁶ See Adam Unikowsky, JENNER & BLOCK <https://jenner.com/people/AdamUnikowsky> (last visited Feb. 6, 2023). Unikowsky clerked for Justice Antonin Scalia and has significant appellate and Supreme Court experience. For example, Unikowsky briefed and argued *Washington State Dept. of Licensing v. Cougar Den, Inc.*, 139 S. Ct. 1000 (2019), a landmark case involving a tribal corporation.

¹²⁷ See Todd A. Noteboom, STINSON, <https://www.stinson.com/people-ToddNoteboom> (last visited Feb. 6, 2023).

¹²⁸ For example, Noteboom argued *Zean v. Fairview Health Servs.*, 858 F.3d 520 (8th Cir. 2017), *Anderson v. EMC Mortgage Corp.*, 631 F.3d 905 (8th Cir. 2011); *Klosek v. American Express*, 370 F. App'x 761 (8th Cir. 2010); and *Syverson v. Firepond, Inc.*, 383 F.3d 745 (8th Cir. 2004). See United States Court of Appeals for the Eighth Circuit, *Oral Arguments by Party/Attorney*, <https://www.ca8.uscourts.gov/oral-arguments-partyattorney> (last visited Feb. 6, 2023).

- d. Theodore Boutrous also served as appellate counsel in *Whitman* and *Jaunich*. Gibson Dunn also provided appellate assistance in *Bally*. And Sheppard Mullin also provided appellate work in *Vogt* and *Bally*.

74. The above discussion is just a partial list of the numerous experienced and high-profile attorneys whom State Farm retained to defend these cases. The company was obviously prepared to spend whatever it took to win this litigation, even if that meant simultaneously hiring multiple law firms and individual superstars within those firms. The fact that class counsel achieved such an impressive settlement against a multitude of top-flight defense law firms is a testament to class counsel's skill and persistence.

c) Class Counsel's Performance Against State Farm's Team

75. In the face of State Farm's formidable multi-firm team, class counsel performed exceptionally well. For instance:

- They obtained seven favorable class certification opinions and did not lose a single motion for class certification during the course of the litigation. They successfully defeated State Farm's request for Rule 23(f) review on three occasions. They also defeated State Farm's request for interlocutory review of Judge Breyer's first summary judgment order in *Bally* after Judge Breyer had certified the question for appeal. Class counsel did not lose a single *Daubert* ruling and amassed an impressive array of rulings from different judges affirming the admissibility of Mr. Witt's testimony. They defeated State Farm's summary judgment motions as to the issues of policy interpretation on the COI Charge and Expense Charge claims in Minnesota and Arizona and obtained a favorable report and recommendation from the magistrate judge in Texas at the time of the settlement. When they lost summary

judgment on the COI Charge claim in *Bally*, they were left with only the Expense Charge claim. But they faced a problem in that the court in *Vogt* had found that the damages model did not fit the Expense Charge claim. Class counsel worked with Mr. Witt to develop a new damages model for the Expense Charge claim, and Judge Breyer then granted summary judgment to the plaintiffs on that claim as to liability. He further rejected State Farm's *Daubert* challenges and motion for decertification of the class directed at the new model.

- The *Vogt* trial and Eighth Circuit appeal were a completely one-sided outcome, with class counsel recovering close to the entire amount they sought, and with the jury requiring just over two hours to deliberate after a four-day trial. There was no way for State Farm to spin this as anything but a complete loss. Likewise, the Eighth Circuit appeal in *Vogt* was a complete and total victory for plaintiffs. Although plaintiffs' successes at trial and in the Eighth Circuit in *Vogt* are notable and impressive, I am especially struck by State Farm's lack of success in securing U.S. Supreme Court review in *Vogt*. As noted above, State Farm brought in heavy hitter Ted Boutrous at the Supreme Court level, and he and State Farm were supported by prominent amicus organizations (U.S. Chamber of Commerce and American Council of Life Insurers), represented by experienced Supreme Court advocates. I would have expected class counsel likewise to bring in an experienced, high-profile Supreme Court advocate to match Boutrous and his team. After all, plaintiffs had more than \$34 million at stake, and that recovery, as well as any recovery in any of these cases, could have been eliminated had the Supreme Court granted review and agreed with State Farm that the case was not a proper class action. But plaintiffs

did not bring in new, high-profile Supreme Court counsel but instead relied on the same team that had represented them so effectively in the lower courts. Thus, Bradley Wilders of Stueve Siegel Hanson was counsel of record in the Supreme Court, and all of the other lawyers listed on the Supreme Court opposition to certiorari were from either Stueve Siegel Hanson or Miller Schirger. As someone with vast experience at the Supreme Court level, I reviewed the opposition to certiorari filed by plaintiffs. In my view, the filing was superb. It responded to every major point raised by State Farm in seeking review and showed compellingly that there was no issue worthy of Supreme Court review. Based on plaintiffs' and State Farm's briefing, the Supreme Court denied certiorari. As I noted above, the appellate precedent in *Vogt*, and in particular the successful defense of the district court's class certification order, were key aspects of the present litigation against State Farm. If class counsel had not performed so effectively, the ability of any of the settlement class to recover would have been seriously imperiled, especially given the relatively low value of the claims individually.

iv. Preclusion of Other Employment Due to Acceptance of the Case

76. As a result of this multi-state litigation, the two primary law firms representing plaintiffs were clearly hampered in their ability to take on significant other work. *See* Siegel Att. Fees Decl. ¶ 9 (“Our investment of labor and expenses certainly limited significantly the other work we were able to take on during the four years following *Vogt*.”). As noted, both plaintiff firms are relatively small. The demands of this case were enormous by any measure. Three attorneys have billed more than 3000 hours on the case; at least one additional attorney billed

more than 2500 hours; and at least three additional attorneys have billed more than 700 hours. I am advised by class counsel that more than 28 depositions were taken on both sides (including depositions in *Vogt*, which the parties agreed could be used in other cases). Plaintiffs' expert (Mr. Witt) alone was deposed 11 times by State Farm in this litigation and three times in *Vogt*. Also, State Farm produced between 35,603 and 44,609 documents in each of the cases (although a number of those were the same in multiple cases). The extensive motions practice resulted in 13 summary judgment briefs, eight class certification or decertification motions, 13 *Daubert* motions, and four Rule 12 motions. Siegel Att. Fees Decl. ¶ 10. Plus, various other motions were litigated.¹²⁹ Clearly, this litigation has been a huge resource drain on the two principal plaintiffs' law firms involved and has significantly impeded the ability of those firms to take on other work. Given the major challenges in this case (*see* ¶¶ 45–62), I have no doubt that such commitment—at the expense of forgoing other lucrative work—was necessary and helps explain why plaintiffs achieved such an impressive settlement.

v. Customary Fee

77. In individual contingency-fee contracts, the attorneys' fees percentage is typically 33⅓ percent, although that percentage can go much higher if, for example, the case goes to trial.¹³⁰ Here, I understand that there were six contingent fee contracts at the 40 percent level

¹²⁹ *See* Doc. 47-1, at 3–40.

¹³⁰ *See, e.g., Galloway v. Kansas City Landsmen, LLC*, 833 F.3d 969, 973 (8th Cir. 2016) (noting that, in the district court's experience, "33% is in the middle of the range that attorneys performing contingency fee work" typically charge); *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (noting that the "usual range for contingent fees is between 33 and 50 percent"); *Krueger v. Ameriprise Fin., Inc.*, No. 11-CV-02781 (SRN/JSM), at *5 (D. Minn. July 13, 2015) ("courts have consistently awarded one-third contingent fees"); *Swinton v. Squaretrade, Inc.*, 454

and three at the 33 $\frac{1}{3}$ percent level. This is not surprising: Contingent fee agreements of 33 percent or more are common.¹³¹

78. In assessing reasonable fees, numerous courts have cited the actual percentages in individual fee agreements. As the Seventh Circuit has explained:

When attorney's fees are deducted from class damages, the district court must try to assign fees that mimic a hypothetical *ex ante* bargain between the class and its attorneys. The court must base the award on relevant market rates and the *ex ante* risk of nonpayment. To determine the market for attorney's fees, the court should

F. Supp. 3d 848, 887 (S.D. Iowa 2020) (recognizing that a one-third contingency fee is “typical”); *Hite v. Vermeer Manufacturing Co.*, 361 F. Supp. 2d 935, 953 (S.D. Iowa 2005) (noting that a one-third contingency is standard in Iowa for contingency cases); *Will v. General Dynamics Corporation*, CIVIL No. 06-698-GPM, at *5 (S.D. Ill. Nov. 22, 2010) (noting that “a one-third fee is consistent with the market rate” for complex plaintiffs’ attorney work); *Urethane*, 2016 WL 4060156, at *5 (noting that “a one-third fee is customary in contingent-fee cases, and indeed that figure is often higher for complex cases or cases that proceed to trial”); *Sanchez v. Roka Akor Chicago LLC*, No. 14-cv-04645, 2017 WL 1425837, at *6 (N.D. Ill. Apr. 20, 2017) (collecting cases noting that the usual contingent fee percentage is between 33 $\frac{1}{3}$ percent and 50 percent); Ted Schneyer, *Legal-Process Constraints on the Regulation of Lawyers’ Contingent Fee Contracts*, 47 DEPAUL L. REV. 371, 381, 409 (1998) (noting that “standard contingent fees . . . [are] one-third of any recovery” and that fees “may vary with the stage at which the matter is resolved (*e.g.*, one-third of the recovery if the case settles before trial; forty percent thereafter”); Eric Helland et al., *Contingent Fee Litigation in New York City*, 70 VAND. L. REV. 1971, 1971 (2017) (study finding that, in New York, contingent fees “are almost always one-third”); Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 DEPAUL L. REV. 267, 286 (1998) (survey of Wisconsin attorneys revealed that “a contingency fee of 33% was by far the most common,” but the “range for those cases involving a suit but not a trial was 20% to 43%[, and] [f]or those going to trial, the range was from 25% to as high as 50%”).

¹³¹ See, e.g., *Montague*, 2011 WL 3626541, at *3 (“A 33% fee award from the common fund in this case is consistent with what is routinely privately negotiated in contingency fee litigation.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: an Empirical Study*, 1 J. EMPIRICAL LEGAL STUD. 27, 35 (2004) (“Substantial empirical evidence indicates that a one-third fee is a common benchmark in private contingency fee cases.”); Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 DEPAUL L. REV. 267, 284–86 (1998) (noting that 33 $\frac{1}{3}$ percent “is the standard contingency fee figure” and finding, in a study of Wisconsin attorneys, that “a contingency fee of 33% was by far the most common, accounting for 92% of those cases”).

look to actual fee contracts that were privately negotiated for similar litigation¹³²

Similarly, the court in *Allapattah* noted that, “when deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.”¹³³ Here, the market rate (the rate negotiated by individual plaintiffs and counsel) was clearly at or above 33⅓ percent. The fact that numerous individual plaintiffs agreed to a 40 percent contingency fee speaks volumes regarding the difficulty of the litigation and the fairness of a fee request of 33⅓ percent.

vi. Any Prearranged Fee

79. As noted (¶ 77), six individuals entered into private contingency fee contracts of 40 percent and three entered into private contingency fee contracts of 33⅓ percent.

vii. Time Limitations Imposed by the Client or the Circumstances

80. In awarding fees, a number of courts have emphasized the litigation pressures faced by plaintiffs. For example, in *Johnson*, the court noted that “priority work that delays the lawyer’s other legal work is entitled to some premium.”¹³⁴ In *League of Women Voters of*

¹³² *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 635 (7th Cir. 2011).

¹³³ 454 F. Supp. 2d at 1211. *Accord*, e.g., *In re Continental Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (“The object in awarding a reasonable attorneys’ fee . . . is to simulate the market.”); *RJR Nabisco Inc. Sec. Litig.*, Fed. Sec. L. Rep. (CCH) ¶ 94, 268 (S.D.N.Y. 1992) (noting that “what should govern [fee] awards is . . . what the market pays in similar cases”).

¹³⁴ *Johnson*, 488 F.2d at 718.

Missouri v. Ashcroft, the Eighth Circuit noted that the fee request was reasonable under the *Johnson* factors in light of, among other things, “the time-sensitive nature of the claims.”¹³⁵ And in *Allapattah*, the court cited the “frantic pace” of the litigation in “giv[ing] significant weight to this factor in setting the [fee] percentage.”¹³⁶

81. Here, serious time limitations were imposed in this litigation. The various courts that were adjudicating individual cases in this litigation held both sides’ feet to the fire, resolving the complicated class certification issues, pressing forward on case management and discovery, setting tight deadlines, and moving forward toward class trials in *Jaunich*, *Whitman*, and *Bally*. At the time of settlement, class counsel had completed discovery in several of the cases and had either recently received dispositive rulings (*Jaunich*, *Whitman*, and *Bally*) or were waiting on such rulings (*McClure*, *Page*). Prosecuting so many cases simultaneously is time consuming and limits the ability of class counsel to perform other work, particularly when the litigation spans multiple jurisdictions and (unlike in an MDL) does not involve the efficiencies of being assigned to a single judge.

82. More generally, because many of the class members in this life insurance litigation were elderly, class counsel were especially mindful of the need to move expeditiously

¹³⁵ 5 F.4th 937, 941 (8th Cir. 2021); see also *In re CenturyLink Sales Practices & Sec. Litig.*, MDL No. 17-2795 (MJD/KMM), at *34 (D. Minn. Dec. 4, 2020) (noting that class counsel aptly responded to “a flurry of substantial and complex motions,” including dispositive motions, filed by defense counsel).

¹³⁶ 454 F. Supp. 2d at 1215. Accord, e.g., *In re OSB Antitrust Litig.*, No. 06-cv-00826, slip op. at 5 (D. Pa. Dec. 9, 2008) (Dkt. No. 947); *Lucas v. Kmart Corp.*, No. 99-cv-01923, 2006 WL 2729260, at *6 (D. Colo. July 27, 2006).

in pursuing and responding to discovery; litigating summary judgment, class certification, and *Daubert* issues; and looking ahead to trial.

viii. Amount Involved and Results Obtained

83. As the Eighth Circuit has explained, “the degree of success obtained is the most critical factor in determining the reasonableness of a fee award.”¹³⁷ For example, in the *Rite Aid Corporation Securities Litigation*, the court emphasized that the \$126.6 million settlement was the largest recovery on record against auditors in a securities class action.¹³⁸ Here, class counsel successfully negotiated a non-reversionary cash settlement of \$325 million, which is likely the largest all-cash cost of insurance settlement in history. Siegel Att. Fees Decl. ¶ 3. And it is clearly large by any class action standard.¹³⁹

84. Moreover, under the settlement, every class member is entitled to meaningful recovery, representing a significant portion of their losses. See ¶¶ 26–27; Siegel Decl. ¶¶ 21–22.

¹³⁷ *Vines v. Welspun Pipes Inc.*, 9 F.4th 849, 856 (8th Cir. 2021) (cleaned up).

¹³⁸ 362 F. Supp. 2d 587, 90 (E.D. Pa. 2005).

¹³⁹ See, e.g., *Cook v. Rockwell Int’l Corp.*, 2017 WL 5076498 *12 (D. Colo. Apr. 28, 2017) (noting that the \$375 million settlement was an “extraordinary result”); *In re Vitamins Antitrust Litig.*, 2004 U.S. Dist. LEXIS 31735, at *30 (D.D.C. Oct. 22, 2004) (noting the “remarkable” \$365 million settlement). Indeed, even in securities settlements, where large settlements are not as infrequent, a downward trend in amounts over the past decade shows the highest total settlement value in 2021 was \$153.7 million. In 2021, only 4 percent of all securities settlements exceeded \$100 million. See Janeen McIntosh & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-year Review*, 19, NERA (2021), https://www.nera.com/content/dam/nera/publications/2022/PUB_2021_Full-Year_Trends_012022.pdf; SECURITIES CLASS ACTION SERVICES, *The Top 100 U.S. Class Action Settlements of All Time*, at 6–17, <https://www.issgovernance.com/file/publications/iss-scas-top-100-us-class-action-settlements-of-all-time-as-of-dec-2022.pdf> (last visited Feb. 6, 2023) (finding only 40 securities settlements over \$300 million since 1995).

The settlement reflects nearly all of the overcharges attributed to the Expense Charge claim and a third of the full alleged overcharges of the COI Charge claim. Importantly, State Farm’s experts offered alternative damages calculations for both claims that ranged from zero damages to sixty percent of the full damages alleged by plaintiffs. And as the ruling in *Whitman* reflects, there was a significant risk of no recovery. Given State Farm’s no-holds-barred defense and the risks faced by class counsel, the percentage of the overcharges recovered here is exceptional. By comparison, the same class counsel obtained a \$90 million cash settlement for policyholders in *Spegele v. USAA Life Insurance Co.*, which “reflect[s] a significant percentage of the alleged damages,” and the district court found that to be an “excellent result.”¹⁴⁰ And that settlement was reached before any summary judgment rulings. Here, after considerably more effort, litigation spanning multiple jurisdictions, and several adverse rulings, class counsel obtained an even better result for a larger class.

85. Critically, all of the funds (after attorneys’ fees, expenses, and any approved service awards) will go to the class. No funds are subject to reversion to State Farm. This is the polar opposite of a case in which class members end up with little value, such as a settlement involving worthless coupons,¹⁴¹ or one where much or most of the fund is unclaimed and reverts

¹⁴⁰ See *Spegele v. USAA Life Ins. Co.*, No. 5:17-CV-967-OLG, 2021 WL 4935978, at *6 (W.D. Tex. Aug. 26, 2021).

¹⁴¹ Compare, e.g., *Swinton*, 454 F. Supp. 3d at 861 (noting that heightened scrutiny is required when a settlement includes coupons as compensation), with *Columbus Drywall & Insulation*, 2012 WL 12540344, at *3 (noting, in awarding attorneys’ fees of 33⅓ percent, that “unlike some class settlements, the recovery here consists entirely of cash, rather than coupons or discounts on future purchases from the defendants”).

to the defendant.¹⁴² Here, as noted, class members will receive substantial compensation for their losses. In my opinion, this is a superb result, especially given the difficulties noted in ¶¶ 45–62. The fact that class counsel achieved such an impressive result weighs strongly in favor of the requested 33⅓ percent fee.

ix. Experience, Reputation, and Ability of Attorneys

86. As noted in ¶¶ 65–70, class counsel are highly skilled and experienced class action attorneys, whose prior representations included many important class action and MDL cases. And they were litigating against several of the country’s most prominent and formidable law firms and individual attorneys within those firms. *See* ¶¶ 71–74.

x. Undesirability of the Case

87. Any lawyer considering involvement on the plaintiffs’ side in this case had to understand that the litigation involved a huge commitment of time and resources, with an outcome that was anything but certain. I would note that the alleged violations here began decades ago, and class counsel appear to be the first and only lawyers willing to represent the settlement class. As noted, class counsel started these cases and filed several of them when the appellate precedent greatly favored State Farm. Plaintiffs were facing difficult legal, factual, class certification, and expert issues. *See* ¶¶ 45–62. And they were litigating against a defendant that was committed to devoting any and all resources necessary to achieve success. Moreover, as fiduciaries for the certified classes, class counsel could not simply cut their losses and quit when the case became

¹⁴² *Compare, e.g., Shanley v. Evereve, Inc.*, 22-CV-0319 (PJS/JFD), at *22 (D. Minn. Nov. 18, 2022) (unclaimed settlement amounts would revert to the defendant).

too challenging and expensive.¹⁴³ Indeed, the challenges of this litigation explain why several class representatives were willing to agree to 40 percent individual contingency fee agreements. *See* ¶ 77. These challenges also explain why (unlike in many other class actions) no other plaintiff firms emerged to file copy-cat class action complaints against State Farm. *See* Siegel Att. Fees Decl. ¶ 23.

xi. Nature and Length of Professional Relationship with the Client

88. For the vast majority of class members, there was no prior relationship. Courts have generally given little weight to this *Johnson* factor, noting that “[t]he meaning of this factor . . . and its effect on the calculation of a reasonable fee has always been unclear.”¹⁴⁴ Here, to the extent that this factor is relevant at all, it is largely neutral.

xii. Awards in Similar Cases

89. Fee awards in other cases involving significant challenges confirm the reasonableness of the fees sought here. As I explain in detail below, the percentage requested here (33 $\frac{1}{3}$ percent) is in line with percentages awarded in numerous other class actions. It also aligns with the fees awarded in other cost of insurance settlements like this one. As I noted, class counsel achieved a greater recovery here than they achieved in *Spegele v. USAA Life Ins. Co.*, and the

¹⁴³ *See, e.g., In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (noting the “fiduciary duty owed [to] the class” by class counsel); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 801 (3d Cir. 1995) (“Beyond their ethical obligations to their clients, class attorneys . . . also owe the entire class a fiduciary duty once the class complaint is filed.”).

¹⁴⁴ *Bruner v. Spring/United Mgmt. Co.*, No. 07-cv-02164-KHV, 2009 WL 2058762, at *9 (D. Kan. July 14, 2009).

court granted their fee request of 30 percent of the recovery in that case.¹⁴⁵ Likewise, class counsel obtained a \$59.75 million cash settlement in *Larson v. John Hancock Life Ins. Co.*, No. RG16813803 (Alameda Co., Cal.), and the trial court awarded their requested fee of 30 percent there.¹⁴⁶ See also ¶ 95 and ¶ 96 (Table 1).

* * *

90. As the above discussion reflects, analysis of the *Johnson* factors demonstrates the reasonableness of the fees sought here. The case imposed enormous demands on class counsel, and it entailed a significant risk that counsel would invest massive hours and substantial funds, only to recover nothing. The fee award sought is supported by the multi-jurisdictional and complex nature of the litigation, the extensive work required of class counsel under severe time pressure, the successful appellate work, and the compelling and historic \$325 million settlement. This is anything but a garden-variety case, and in my opinion, the fee award should reflect that reality.

¹⁴⁵ *Spegele v. USAA Life Ins. Co.*, No. 5:17-CV-967-OLG, 2021 WL 4935978, at *6 (W.D. Tex. Aug. 26, 2021).

¹⁴⁶ *Larson v. John Hancock Life Ins. Co. (U.S.A.)*, No. RG16813803, 2018 WL 8016973, at *6 (Cal.Super. May 08, 2018).

B. The Percentage Requested Is Supported by Awards in Other Class Actions, Including So-Called Mega-Fund Cases

91. In this section, I explain why, in my opinion, an award of 33 $\frac{1}{3}$ percent is consistent with awards in other complicated class actions that resulted in impressive settlements. My focus here is on mega-fund settlements, *i.e.*, those above \$100 million.¹⁴⁷

92. I am fully aware that a fee of 33 $\frac{1}{3}$ percent is above the average and median fee award in class actions, although it is close to the percentage range in the Eighth Circuit.¹⁴⁸ I also recognize that, in general, fee awards (as a percentage) tend to decline as the amount of the settlement increases, with the lowest percentage awards appearing in so-called mega-fund settlements.¹⁴⁹ The Eighth Circuit has not expressly or implicitly adopted this approach, however.

¹⁴⁷ See, e.g., *Reyes v. Experian Info. Sols.*, No. 20-55909, at *4 (9th Cir. Apr. 8, 2021) (“megafund cases are usually those with settlements exceeding \$100 million”); *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 998-99 (mega-fund class actions involve settlements over \$100 million); *Peace Officers’ Annuity & Benefit Fund of Georgia v. DaVita Inc.*, No. 17-CV-0304-WJM-NRN, (D. Colo. July 15, 2021) (“megafund” settlement of over \$130 million); *In re Snap Inc. Sec. Litig.*, No. 2:17-cv-03679-SVW-AGR (C.D. Cal. June 29, 2022) (approving mega-fund settlement of \$154.7 million).

¹⁴⁸ See, e.g., THOMAS E. WILLGING, LAURAL L. HOOPER & ROBERT J. NIEMIC, EMPIRICAL STUDY OF CLASS ACTIONS IN FOUR FEDERAL DISTRICT COURTS: FINAL REPORT TO THE ADVISORY COMMITTEE ON CIVIL RULES 151 (Fed. Judicial Ctr. 1996), available at http://www.uscourts.gov/sites/default/files/rule23_1.pdf (1996 study of four federal districts found that average and median awards ranged from 26 to 31 percent); Fitzpatrick, *supra* note 21, at 811, 833, 836 (finding, for 2006–2007 period, average and median of about 25 percent with the awards in the Eighth Circuit having an average of 26.1 percent and a median of 30 percent); Eisenberg, Miller & Germano (2017), *supra* note 21, at 947, 951 (finding average of 27 percent and median of 29 percent for 2009–2013 period with an average of 29 percent and a median of 32 percent in the Eighth Circuit); Eisenberg & Miller (2010), *supra* note 21, at 259 (finding, in 1993–2008 study, average fees of 24 percent and median fees of 25 percent with average of 25 percent and median of 30 percent in the Eighth Circuit).

¹⁴⁹ See, e.g., Fitzpatrick, *supra* note 21, at 811 (noting that, in the eight cases involving settlements between \$250 million and \$500 million during 2006–2007, average and median awards

And importantly, the very concept that fees as a percentage should decline as the size of the fund increases has been roundly criticized by a number of courts, and I wholeheartedly agree with those criticisms. In *Syngenta*, for example, the district court explained that the declining percentage approach “fails to appreciate the immense risks undertaken by attorneys in prosecuting complex cases in which there is a great risk of no recovery.”¹⁵⁰ Similarly, in *Urethane*, the district court rejected objectors’ reliance on statistical studies in arguing that fee awards should necessarily decrease with the size of the fund. To the contrary, in awarding attorneys’ fees of 33⅓ percent in *Urethane*, the court stated:

This Court appreciates that some courts have awarded lower percentages to avoid granting an excessive windfall to counsel under the unique circumstances of those cases. On the other hand, *the Court agrees with those courts who have noted that such a diminishing scale can fail to provide the proper incentive for counsel* [I]n the present case, . . . class counsel achieved extraordinary success in a very long litigation. Thus, use of a declining-scale approach is not appropriate here, and the Court will award fees based on the unique circumstances of the case.¹⁵¹

93. Likewise, the Third Circuit has noted that the “position [that fees should decrease with the size of the fund] has been criticized by respected courts and commentators, who contend that such a fee scale often gives counsel an incentive to settle cases too early and too cheaply.”¹⁵²

were 17.8 percent and 19.5 percent, respectively); Eisenberg, Miller & Germano (2017), *supra* note 21, at 947–48 (describing “scaling effect” where, “as [the] recovery amount increases, the ratio of the size of the attorneys’ fee relative to the size of the recovery (*i.e.*, the fee percentage) tends to decrease” and finding that average and median fees for settlements greater than \$100 million varied from “a low of 16.6% in 2009 to a high of 25.5% in 2011”).

¹⁵⁰ *In re Syngenta*, 357 F. Supp. 3d at 1114 (quoting *Allapattah*, 454 F. Supp. 2d at 1212-13).

¹⁵¹ *Urethane*, 2016 WL 4060156, at *5–6 (emphasis added).

¹⁵² *In re Cendant Corp. Litig.*, 264 F3d 201, 284 n.55 (3d Cir. 2001).

In the *Rite Aid Securities Litigation*, the Third Circuit made clear that “there is no rule that a district court must apply a declining percentage reduction in every settlement involving a sizeable fund.”¹⁵³ In the court’s view, “the declining percentage concept does not trump the fact-intensive [attorneys’ fees] analysis.”¹⁵⁴ And in *Allapattah*, the court emphasized that a declining percentage reduction:

is antithetical to the percentage of the recovery method[,] . . . the whole purpose of which is to align the interests of Class Counsel and the Class by rewarding counsel in proportion to the result obtained. By not rewarding Class Counsel for the additional work necessary to achieve a better outcome for the class, the sliding scale approach creates the perverse incentive for the Class Counsel to settle too early for too little.¹⁵⁵

¹⁵³ *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 303 (3d Cir. 2005), *as amended* (Feb. 25, 2005).

¹⁵⁴ *Id.*

¹⁵⁵ 454 F. Supp. 2d at 1213. *Accord, e.g., In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 197 (E.D. Pa. 2000) (similar).

Other courts have made the same points.¹⁵⁶ Moreover, numerous scholars agree that fee percentages should not necessarily be lower in mega-fund cases.¹⁵⁷ In my opinion, these courts

¹⁵⁶ See, e.g., *In re Equifax*, 999 F.3d at 1280 (11th Cir.) (“We decline to add an additional factor requiring the District Court to expressly consider the economies of scale in a megafund case [in part because r]equiring consideration of the economies of scale could also create ‘perverse incentives,’ as it may encourage class counsel to pursue ‘quick settlements at sub-optimal levels.’”), *cert. denied*, *Huang v. Spector*, 142 S. Ct. 431 (2021), and *cert. denied*, *Watkins v. Spector*, 142 S. Ct. 765 (2022); *In re Xcel Energy, Inc., Secs., Derivative & “ERISA” Litig.*, 364 F. Supp. 2d 980, 997 (D. Minn. 2005) (rejecting an objectors’ contention that “courts traditionally account[] for economies of scale by awarding lower fees as the size of the fund increases”) (citation omitted); *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 303 (3d Cir. 2005) (noting that “there is no rule that a district court must apply a declining percentage reduction in every settlement involving a sizable fund”); *In re Auto. Parts Antitrust Litig.*, No. 2:12-cv-00203, 2017 WL 3525415, at *2 (E.D. Mich. July 10, 2017) (“[T]here is no requirement that the Court necessarily apply a declining fee percentage based on the absolute dollar amount of [the settlement]. [O]ther federal courts have also rejected the so-called ‘mega fund’ adjustment to fee awards based solely on the size of a settlement. Instead, consideration must be given to, among other things, the stage of the litigation when a settlement has been achieved and the labor and expense that were required . . . to achieve the settlement.”); *In Re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, 2016 WL 6215974, at *16 (“[C]ourts have rejected a blanket rule that would automatically cap the fee percentage at a low figure when the class recovery is quite high.”); *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011) (rejecting “[o]bjectors argu[ment] that the fact of a large settlement justifies a reduction in the percent fee awarded” because “[s]uch an approach . . . fails to appreciate the immense risks undertaken by attorneys in prosecuting complex cases in which there is a great risk of no recovery”); *Nichols v. SmithKline Beecham Corp.*, No. 00-cv-06222, 2005 WL 950616, at *21 (E.D. Pa. Apr. 22, 2005) (noting that “reducing the percentage of recovery awarded as a fee in this case to a mean fee percentage derived from other cases . . . [would be] an impermissibly formulaic approach”); *In re Linerboard Antitrust Litig.*, No. 98-cv-05055, 2004 WL 1221350, at *16 (E.D. Pa. June 2, 2004) (rejecting “sliding scale approach” as “economically unsound” and reasoning that “the highly favorable settlement was attributable to [class counsel’s] skill and it is inappropriate to penalize them for their success”); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Pracs., & Prods. Liab. Litig.*, No. 8:10ML 02151 JVS (FMOx) (C.D. Cal. June 17, 2013), ECF No. 3802 (“The Court . . . agrees with . . . other courts . . . which have found that decreasing a fee percentage based only on the size of the fund would provide a perverse disincentive to counsel to maximize recovery for the class.”).

¹⁵⁷ See, e.g., John C. Coffee, Jr., *Understanding the Plaintiff’s Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 COLUM. L. REV. 669, 697 (1986); Declaration of Professor Geoffrey P. Miller at 11, *In re Takata*

and scholars have correctly criticized the notion that fee percentages should necessarily decline with the size of the fund.

94. An empirical study conducted in 2010 by Professor Brian Fitzpatrick of Vanderbilt University School of Law showed an inverse relationship between fee percentages and the amounts of settlements.¹⁵⁸ Of the mega-fund settlements surveyed by Professor Fitzpatrick where the fund was between \$250 million and \$500 million—like the one here—the average and median fee awards were 17.8 percent and 19.5 percent, respectively.¹⁵⁹ There are several caveats that I would point out, however. First, as the court in *Syngenta* noted in discussing mega-fund cases involving lower percentage awards, in “many such cases, the court did not reject a higher request but rather accepted the low one.”¹⁶⁰ Second, as I note below (¶ 96), I have identified 25 settlements since the 2010 study involving funds between \$250 and \$500 million in which percentage-based fees of 33 percent or greater were awarded. Third, by definition, the median

Airbag Prods. Liab. Litig., No. 1:15-md-02599-FAM (S.D. Fla.) (Dkt. No. 2318-3) (filed Jan. 24, 2018), available at <https://www.autoairbagsettlement.com/Content/Documents/Exhibit%20C%20to%20Response%20to%20Objections%20HN.pdf>; Declaration of Brian T. Fitzpatrick at 14 & n.4, *In re High-Tech Employees Antitrust Litig.*, No. 11-CV-2509-LHK (N.D. Cal.) (filed May 8, 2015), available at http://www.hightechemployeelawsuit.com/media/303927/15-5-8__1079__fitzpatrick_decl__motion_for_attorney_fees.pdf; Declaration of Brian T. Fitzpatrick on the Reasonableness of Class Counsel’s Requested Award of Attorneys’ Fees at 7, *In re Urethane Antitrust Litig.*, No. 2:04-md-01616-JWL (D. Kan.) (Dkt. No. 3269-1) (filed July 15, 2016), available at http://polyetherpolyolsettlement.com/docs/Reply_Mem_iso_Attys_Fees_etc_Exhibits_for_website.pdf.

¹⁵⁸ Fitzpatrick, *supra* note 21, at 845.

¹⁵⁹ *Id.* at 839 tbl.11. See also *Ark. Teacher Ret. Sys. v. State St. Corp.*, 25 F.4th 55, 65–66 (1st Cir. 2022) (discussing Professor Fitzpatrick’s findings).

¹⁶⁰ *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1114 (D. Kan. 2018).

value is the value in the middle of a data set; of the values used to identify the median, half are necessarily equal to or *greater than* the median. And various values used to calculate an average may be equal to or *greater than* the average.¹⁶¹ Of the eight cases surveyed by Professor Fitzpatrick with settlements in the \$250 million to \$500 million range, the standard deviation of the fee awards in those cases was 7.9 percent, showing large variability in the percentages arrived at in mega-fund cases like this one. Such variability supports Judge Lungstrum’s remarks in *Syngenta* that, while

[i]t is true that economies of scale may mean that a large percentage would result in an unacceptable windfall in some cases . . . the court does not agree that megafund cases should necessarily be subject to a diminishing scale by which the award percentage falls as the settlement amount grows. As the Court has noted previously, use of such a scale fails to provide the proper incentive for counsel and is fundamentally at odds with the percentage-of-the-fund approach¹⁶²

Instead, all of the mega-fund cases, including the ones that awarded a lower percentage, were “decided on their particular facts, just as this case must be decided by application of the *Johnson* factors to its particular circumstances.”¹⁶³ As I discuss throughout this Declaration, the extraordinary level of work and result achieved here in the face of enormous risk warrants a substantial fee, even though lower percentages might be more appropriate in different factual settings.

¹⁶¹ Indeed, from 1996 to 2011, the median percentage of attorneys’ fees in mega-fund cases valued between \$100 and \$500 million was 23.9%; the median value from 2012–2021 was 25.8%, *see McIntosh & Starykh, supra* note 139, at 27.

¹⁶² *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1114 (D. Kan. 2018).

¹⁶³ *Id.*

95. Indeed, there are numerous mega-fund cases with percentage-based fee awards equal to or greater than those sought here. As would be expected, those awards are based on a careful analysis of the specific facts and challenges of a given case. For example, in *In re Vitamins Antitrust Litigation*,¹⁶⁴ *Standard Iron Works v. ArcelorMittal*,¹⁶⁵ and *In re Flonase Antitrust Litigation*,¹⁶⁶ the courts awarded, respectively, 34.06 percent, 33 percent, and 33½ percent as attorneys’ fees because of the complex issues involved, the quality of class counsel’s work, and the results obtained.

96. The mega-fund cases cited in paragraph 95 are just three examples. In the table below, I have collected 48 mega-fund cases that involved fee awards of 30 percent or greater (twenty-five of which awarded 33 percent or more). Importantly, twenty-five of the cases post-date the publication of Professor Fitzpatrick’s 2010 study.

TABLE 1: Fee Awards of 30 Percent or More in Mega-Fund Class Actions

Case	Recovery	Fee Award	Trial?
<i>Cook v. Rockwell Int’l Corp.</i> , 2017 WL 5076498 (D. Colo. Apr. 28, 2017)	\$375 million	40 percent	Yes
<i>Lobo Exploration Co. v. BP Am. Prod.</i> , No. CJ-1997-72 (Oka. Dist. Ct., Beaver Cnty. Dec. 8, 2005)	\$150 million	40 percent	No
<i>Simmons v. Anadarko Petroleum Corp.</i> , No. CJ-2004-57 (Okla. Dist. Ct., Caddo Cnty., Dec. 23, 2008)	\$155 million	40 percent	No

¹⁶⁴ No. MISC 99-197(TFH), 2001 WL 34312839, at *11–13 (D.D.C. July 16, 2001).

¹⁶⁵ No. 08-cv-05214, 2014 WL 7781572, at *1 (N.D. Ill. Oct. 22, 2014).

¹⁶⁶ 951 F. Supp. 2d 739, 747–49 (E.D. Pa. 2013).

Case	Recovery	Fee Award	Trial?
<i>Lauriello v. Caremark RX LLC</i> , No. 01-cv-2003-006630.00 (Ala. Cir. Ct., Jefferson Cnty. Aug. 15, 2016)	\$310 million	40 percent	No
<i>In re Merry-Go-Round Enterprises, Inc.</i> , 244 B.R. 327 (Bankr. D. Md. 2000)	\$185 million	40 percent	No
<i>In re Combustion, Inc.</i> , 968 F. Supp. 1116 (W.D. La. 1997)	\$127 million	36 percent	No ¹⁶⁷
<i>In re Managed Care Litig. v. Aetna</i> , MDL No. 1334, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003)	\$100 million	35.5 percent	No
<i>Haddock v. Nationwide Life Ins. Co.</i> , No. 3:01-cv-01552-SRU (D. Conn. Apr. 9, 2015) (Dkt. No. 601)	\$140 million	35 percent	No
<i>In re Vitamins Antitrust Litig.</i> , No. 99-197, 2001 WL 34312839 (D.D.C. July 16, 2001)	\$365 million	34.06 percent	No
<i>In re Syngenta AG MIR 162 Corn Litig.</i> , 357 F.Supp.3d 1094 (D. Kan. 2018)	\$1.5 billion	33.33 percent	Yes
<i>Hale v. State Farm Mut. Auto Ins. Co.</i> , 2018 WL 6606079 (S.D. Ill. Dec. 16, 2018)	\$250 million	33.33 percent	Yes
<i>In re Loestrin 24 Fe Antitrust Litig.</i> , MDL No. 2472 (D.R.I. July 17, 2020)	\$120 million	33.33 percent	No
<i>DeLoach v. Phillip Morris Co.</i> , No. 1:00-cv-01235, 2003 WL 25683496 (M.D.N.C. Dec. 19, 2003)	\$212 million	33.33 percent	No

¹⁶⁷ A trial was conducted in the parallel government enforcement action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq., but the private class action based on plaintiffs' tort claims was settled prior to trial.

Case	Recovery	Fee Award	Trial?
<i>In re Tricor Direct Purchaser Antitrust Litig.</i> , 1:05-cv-00340-SLR (D. Del. Apr. 23, 2009) (Dkt. No. 543)	\$250 million	33.33 percent	No
<i>In re Neurontin Antitrust Litig.</i> , No. 2:02-cv-01830 (D.N.J. July 6, 2014) (Dkt. No. 114)	\$190 million	33.33 percent	No
<i>In re Titanium Dioxide Antitrust Litig.</i> , No. 1:10-cv-00318 (D. Md. Dec. 13, 2013) (Dkt. No. 555)	\$163.5 million	33.33 percent	No
<i>In re U.S. Foodservice, Inc. Pricing Litig.</i> , No. 3:07-md-01894 (AWT) (D. Conn. Dec. 9, 2014) (Dkt. No. 521)	\$297 million	33.33 percent	No
<i>In re Urethane Antitrust Litig.</i> , No. 2:04-md-01616-JWL (D. Kan. July 29, 2016) (Dkt. No. 3276)	\$835 million	33.33 percent	Yes
<i>In re Relafen Antitrust Litig.</i> , No. 01-cv-12239-WGY (D. Mass. Apr. 9, 2004) (Dkt. No. 297) (direct purchaser litigation)	\$175 million	33.33 percent	No
<i>In re Flonase Antitrust Litig.</i> , 951 F. Supp. 2d 739 (E.D. Pa. 2013)	\$150 million	33.33 percent	No
<i>City of Greenville v. Syngenta Crop Prot.</i> , No. 3:10-cv-00188 (S.D. Ill. Oct. 23, 2012)	\$105 million	33.33 percent	No
<i>In re OSB Antitrust Litig.</i> , No. 06-cv-00826 (D. Pa. Dec. 9, 2008) (Dkt. No. 947)	\$120.7 million	33.33 percent	No
<i>In re Apollo Grp. Inc. Sec. Litig.</i> , No. 04-cv-02147-PHX-JAT, 2012 WL 1378677 (D. Ariz. Apr. 20, 2012)	\$145 million	33.33 percent	Yes

Case	Recovery	Fee Award	Trial?
<i>Cabot East Broward 2 LLC v. Cabot</i> , 2018 WL 5905415 (S.D. Fla. Nov. 9, 2018)	\$100 million	33.33 percent	No
<i>In re Buspirone Antitrust Litig.</i> , No. 1:01-md-01413-JGK (S.D.N.Y. Apr. Nov. 18, 2003) (Dkt. No. 171)	\$220 million	33.30 percent	No
<i>In re Initial Pub. Offering Sec. Litig.</i> , 671 F. Supp. 2d 467 (S.D.N.Y. 2009)	\$510 million	33.30 percent	No
<i>In re Broiler Chicken Antitrust Litig.</i> , 16 C 8637 (N.D. Ill. Oct. 7, 2022)	\$181 million	33 percent	No
<i>Standard Iron Works v. ArcelorMittal</i> , No. 08-cv-05214, 2014 WL 7781572 (N.D. Ill. Oct. 22, 2014)	\$164 million	33 percent	No
<i>Dahl v. Bain Capital Partners, LLC</i> , No. 1:07-cv-12388 (D. Mass. Feb. 2, 2015) (Dkt. No. 1095)	\$590.5 million	33 percent	No
<i>San Allen, Inc. v. Buehrer</i> , No. CV-07-644950 (C.P., Cuyahoga Cnty., Ohio Nov. 25, 2014)	\$420 million	32.7 percent	Yes
<i>In re Auto. Refinishing Paint Antitrust Litig.</i> , No. MDL-1426, 2008 WL 63269 (E.D. Pa. Jan. 3, 2008)	\$105.7 million	32.7 percent	No
<i>Allapattah Services, Inc. v. Exxon Corp.</i> , 454 F. Supp. 2d 1185 (S.D. Fla. 2006)	\$1.06 billion	31.33 percent	Yes
<i>In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.</i> , 56 F.3d 295 (1st Cir. 1995)	\$220 million	30.9 percent	Yes
<i>In re Domestic Drywall Antitrust Litig.</i> , MDL No. 2437 (E.D. Pa. July 17, 2018)	\$190 million	30 percent	Yes
<i>Peace Officers' Annuity & Benefit Fund v. DaVita Inc.</i> , Civil Action No. 17-cv-	\$135 million	30 percent	No

Case	Recovery	Fee Award	Trial?
0304-WJM-NRN (D. Colo. July 15, 2021)			
<i>In re Dole Food Co., Inc. Stockholder Litig.</i> , 2016 WL 541917 (Del. Ch. Feb. 10, 2016)	\$113 million	30 percent	Yes
<i>Weatherford Roofing Co. v. Employers Nat'l Ins. Co.</i> , No. 91-05637 (116th Tex. Dist. Ct., Dallas Cnty. Dec. 1, 1995)	\$140 million	30 percent	Yes
<i>In re (Bank of America) Checking Account Overdraft Litig.</i> , 830 F. Supp. 2d 1330 (S.D. Fla. 2011)	\$410 million	30 percent	No
<i>Tennille v. Western Union Co.</i> , No. 09-cv-00938-JLK-KMT, 2014 WL 5394624 (D. Colo. Oct. 15, 2014)	\$180 million	30 percent	No
<i>In re Linerboard Antitrust Litig.</i> , No. 98-cv-05055, 2004 WL 1221350 (E.D. Pa. June 2, 2004)	\$202.5 million	30 percent	No
<i>In re Home-Stake Prod. Co. Sec. Litig.</i> , MDL No. 153 (N.D. Okla. Jan. 2, 1990)	\$185 million	30 percent	Yes
<i>In re (Chase Bank) Checking Account Overdraft Litig.</i> , No. 1:09-md-02036 (S.D. Fla. Dec. 19, 2012) (Dkt. No. 3134)	\$162 million	30 percent	No
<i>In re (Citizens Bank) Checking Account Overdraft Litig.</i> , No. 1:09-md-02036 (S.D. Fla. Mar. 12, 2013) (Dkt. No. 3331)	\$137.5 million	30 percent	No
<i>In re Informix Corp. Sec. Litig.</i> , No. 97-cv-01289-CRB (N.D. Cal. Nov. 23, 1999) (Dkt. No. 471)	\$132.2 million	30 percent	No
<i>Kurzweil v. Philip Morris Co., Inc.</i> , Nos. 94-civ-2373 (MBM), 94-civ-2546 (BMB), 1999 WL 1076105 (S.D.N.Y. Nov. 30, 1999)	\$123 million	30 percent	No

Case	Recovery	Fee Award	Trial?
<i>In re Ikon Office Solutions, Inc. Sec. Litig.</i> , 194 F.R.D. 166 (E.D. Pa. 2000)	\$111 million	30 percent	No
<i>Klein v. O'Neal, Inc.</i> , 705 F. Supp. 2d 632 (N.D. Tex. Apr. 9, 2010), <i>as modified</i> (June 14, 2010)	\$110 million	30 percent	No
<i>In re Prison Realty Sec. Litig.</i> , No. 3:99-cv-00458 (M.D. Tenn. Feb. 9, 2001) (Dkt. No. 108)	\$104 million	30 percent	No

97. These cases show that, even in mega-fund cases, there is nothing unprecedented about awards in the range requested here. In my view, this case—even as a mega-fund case—justifies an award of 33⅓ percent, given the difficult factual, legal, and expert issues, contested class certification issues, formidable opposing counsel, multi-jurisdictional nature, and the significant risk of no recovery. That justification is even greater if the Court considers the trial on the merits in *Vogt*, which I view as a very strong fact favoring a 33⅓ percent award—a fact present in only 12 of the 48 cases listed in Table 1. As I have noted, there is no question that class counsel’s success at trial in *Vogt*, the appellate rulings obtained there, and the avoidance of U.S. Supreme Court review were significant benefits to the settlement class. The fact that class counsel had to litigate the cases for several more years following *Vogt* and invest over 23,000 additional

hours of work to achieve this settlement speaks volumes regarding the risk to class counsel and the formidable defense by State Farm that class counsel overcame.¹⁶⁸

98. Ultimately, in my view, it is erroneous to focus solely on averages and medians. Instead, a nuanced, fact-specific analysis of the 33 $\frac{1}{3}$ percent fee request is critical. That analysis should be driven by the particular circumstances of this case, including the litigation's difficult legal and factual challenges, the precise work performed by class counsel, and the fact that class counsel litigated several cases up to the eve of trial—and, if *Vogt* is considered, prevailed in a hard-fought classwide trial and in the various appellate challenges—and subsequently negotiated a historic \$325 million non-reversionary cash settlement. Relying on averages and medians without focusing on the crucial facts of *this* litigation and settlement would be a flawed approach.

99. Moreover, given that mega-fund class actions are less common than those with smaller recoveries, average and median fee percentages for those cases are subject to greater variation.¹⁶⁹ Notably, a number of mega-fund settlements have been securities class actions,

¹⁶⁸ Of course, if the trial and appellate work in *Vogt* are considered, it would be appropriate to also consider that class counsel received significant attorneys' fees in *Vogt* equal to 33 $\frac{1}{3}$ percent. But if the Court were to combine the \$325 million settlement and the \$41.6 million judgment in *Vogt* (which I understand was the total amount after post-judgment interest was included), that would put the total recovery in all the litigation against State Farm at \$366.66 million. A total fee of 33 $\frac{1}{3}$ percent of that amount would still fit comfortably within the awards listed in Table 1 and the precedent described above. Thus, while class counsel's total fee award is being recovered separately in *Vogt* and this case, the aggregate amount is still reasonable.

¹⁶⁹ See, e.g., *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, 2016 WL 6215974, at *16 (noting that with respect to mega-fund cases "there are fewer percentage awards to serve as a benchmark; consequently, there is some variability in the percentages awarded in these cases").

where average and median fee awards tend to be lower than the overall averages and medians.¹⁷⁰ Presumably, one reason for lower fees in securities cases is that the crucial issue of class certification—a major source of dispute here (*see* ¶¶ 54–55)—is generally less challenging in securities cases.¹⁷¹ And in many securities settlements, private plaintiffs were helped by parallel government enforcement actions.¹⁷² Moreover, in some mega-fund securities fraud settlements, courts have pointed to the lack of complex legal and factual challenges and the relative ease of achieving settlement in awarding lesser attorneys’ fees.¹⁷³ In contrast, class counsel did not have the benefit of any of these risk-reducing factors here.

¹⁷⁰ *See* Fitzpatrick, *supra* note 21, at 834.

¹⁷¹ *See, e.g., In re FedEx Ground Package Sys., Inc. Employment Practices Litig.*, No. 3:05-MD-527 RLM, 2017 WL 1735541, at *5 (N.D. Ind. Apr. 28, 2017) (noting, in awarding attorneys’ fees of 30 percent and distinguishing lower fee awards in comparable securities cases, that “securities cases . . . differ . . . in many ways, not least of which that class certification in securities cases is nearly automatic under today’s laws”); *see also* Robert H. Klonoff, *The Decline of Class Actions*, 90 Wash. U. L. Rev. 729, 824 (2013) (noting that because “securities fraud suits . . . tend to involve overarching issues that impact all class members and seek damages that can be easily calculated,” they “are commonly certified”).

¹⁷² *See, e.g., PaineWebber Ltd. P’ships Litig. v. Geodyne Res., Inc.*, 999 F. Supp. 719, 725 (S.D.N.Y. 1998) (“[W]hile Class Counsel did not necessarily piggyback on the SEC’s efforts from the beginning of these actions, their risk in litigating Class Members’ claims was substantially reduced by pressure placed on [the defendant] in the SEC Order. Largely for this reason, the Court declines to award Class Counsel the doubling of its lodestar that they seek.”); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1336 (S.D. Fla. 2001) (SEC’s investigation and investigatory materials were “at least somewhat helpful” to class counsel, and merited a downward adjustment in class counsel’s requested fee); *see also* Lisa L. Casey, *Reforming Securities Class Actions from the Bench: Judging Fiduciaries and Fiduciary Judging*, 2003 B.Y.U.L. Rev. 1239, 1297 (2003) (noting that “courts reduced fees [in securities class actions] based on their perception that enforcement actions by the SEC assisted plaintiffs’ counsel or reduced the risk of loss”).

¹⁷³ *See, e.g., In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 742–43 (3d Cir. 2001) (noting that the “case was neither legally nor factually complex and did not require significant motion practice or discovery by [class counsel], and the entire duration of the case from the filing

100. In my opinion, the critical takeaway from the case law is that attorneys’ fee awards should bear a relationship to the degree of risk involved.¹⁷⁴ Indeed, courts often expressly note the degree of risk assumed by class counsel in approving larger fee awards.¹⁷⁵ As one court noted in awarding attorneys’ fees of 33 percent, “Courts recognize that the risk of receiving no recovery is a major factor in awarding attorneys’ fees. [T]he riskier the case, the greater the justification for a substantial fee award.”¹⁷⁶ Another court explained that “[a]ttorneys’ risk is perhaps the foremost factor in determining an appropriate fee award.”¹⁷⁷ Indeed, a number of the

of the Amended Complaint to the submission of a Settlement Agreement to the District Court was only four months”).

¹⁷⁴ See, e.g., Eisenberg & Miller, *supra* note 131, at 27, 38 (“Fees are . . . correlated with risk: the presence of high risk is associated with a higher fee, while low-risk cases generate lower fees That fees are adjusted for risk is widely accepted in the literature.”). In their more recent study, Professors Eisenberg, Miller, and Germano found that “the association between risk and fee percentage continues in the 2009–2013 data.” Eisenberg, Miller & Germano (2017), *supra* note 21, at 958

¹⁷⁵ See, e.g., *In re Life Time Fitness Inc., Tel. Consumer Prot. Act Litig.*, 847 F.3d 619, 623 (8th Cir. 2017) (affirming district court’s percentage-based fee award because, among other things, the attorneys assumed significant risk in taking on the lawsuit and class counsel devoted significant time to the litigation); *Pollard v. Remington Arms Co.*, 320 F.R.D. 198, 198 (W.D. Mo. 2017) (noting that class counsel “faced great risks in this litigation” and that, in light of favorable verdicts obtained by the defendants elsewhere, “there was a considerable chance Plaintiffs would recover nothing”). Accord, e.g., *Larson v. Allina Health Sys.*, No. 17-cv-03835 (SRN/TNL), at *4 (D. Minn. May 22, 2020); *Thorkelson v. Publ’g House of the Evangelical Lutheran Church in Am.*, Court File No. 10 cv 1712 (MJD/JSM), at *7 (D. Minn. Apr. 5, 2013); *In re Uponor, Inc., F1807 Plumbing Fittings Prods. Liab. Litig.*, Court File No. 11-MD-2247 ADM/JJK, at *23 (D. Minn. June 29, 2012).

¹⁷⁶ *Montague*, 2011 WL 3626541, at *3 (D.S.C. Aug. 17, 2011).

¹⁷⁷ *Francisco v. Numismatic Guar. Corp. of Am.*, No. 06-61677-CIV, 2008 WL 649124, at *14 (S.D. Fla. Jan. 31, 2008). Accord, e.g., *In re Ocean Power Technologies, Inc.*, No. 3:14-cv-03799, 2016 WL 6778218, at *28 (D.N.J. Nov. 15, 2016) (“Courts across the country have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys’ fees.”); *Jenkins v. Trustmark Nat’l Bank*, 300 F.R.D. 291, 309

Johnson factors focus specifically on the risks imposed by the litigation, including the difficulty of the issues and the undesirability of the case. See ¶ 40 (quoting *Johnson* factors)

101. An emphasis on risk is especially relevant in mega-fund cases, where class counsel often invest many thousands of attorney hours and millions of dollars in expenses. For example, in *In re Charter Communications*, the court reasoned that the percentage-based fee award was “particularly reasonable given the risks undertaken . . . and the excellent results achieved [by class counsel].”¹⁷⁸ Similarly, in *Roberts v. Texaco*, the court observed that it is “the skill, ingenuity, effort and *risk* of counsel that, in the final analysis, produces the result.”¹⁷⁹ As noted, this case exemplifies the significant risks undertaken by class counsel on behalf of the class to obtain a historic settlement.

102. In short, the requested fee of 33⅓ percent of a \$325 million judgment fits comfortably within the case law, given the particular facts and circumstances of this case. In my opinion, the fact that this is a mega-fund case does not undermine that conclusion.

C. There Is No Need for a Lodestar Cross-Check

(S.D. Miss. 2014) (noting that “courts have found that class counsel ought to be compensated . . . for risk of loss or nonpayment assumed by carrying through with the case”).

¹⁷⁸ No. 4:02-CV-1186 CAS, at *22 (E.D. Mo. June 30, 2005).

¹⁷⁹ *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 197 (S.D.N.Y. 1997) (emphasis added). *Accord*, e.g., *In re Tyco Int’l Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 260 (D.N.H. 2007) (noting that the case “involved a greater risk of non-recovery than other multibillion-dollar securities class action settlements” and emphasizing that, “[h]ad [class counsel] lost at summary judgment or fallen short of establishing liability at trial, they would have lost the tens of millions of dollars in expenses and all of the attorney time that they collectively invested in th[e] case”).

103. The next issue is whether the fees requested by class counsel should be tested using a “lodestar cross-check”—*i.e.*, a procedure that courts sometimes use to verify the reasonableness of the fees sought based on sheer percentages.¹⁸⁰ This Court is certainly not *required* to conduct a lodestar cross-check.¹⁸¹ Indeed, a lodestar cross-check can lead to the very harmful consequences that the percentage method is designed to avoid. As one court has noted, “[t]he lodestar analysis, even when used as a cross check to determine a reasonable percentage award, has the effect of rewarding attorneys for the same undesirable activities that the percentage method was designed to discourage, namely ‘incentiviz[ing] [class counsel] to multiply filings

¹⁸⁰ See, e.g., *In re Xcel Energy, Inc.*, 364 F. Supp. 2d at 999 (“Although not required, the court will exercise its discretion and verify the reasonableness of [an] attorney fee award by cross-checking it against lodestar.”) (citing *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999)); *In re Crocs, Inc. Sec. Litig.*, No. 07-cv-02356-PAB-KLM, 2014 WL 4670886, at *4 & n.4 (D. Colo. Sept. 18, 2014) (describing role of lodestar cross-check as a means to confirm the reasonableness of a percentage fee award, and noting that the “cross-check calculation need entail neither mathematical precision nor bean counting” (citation omitted)).

¹⁸¹ See, e.g., *In re CenturyLink Sales Practices & Sec. Litig.*, No. CV 17-2832, 2020 WL 7133805, at *13 (D. Minn. Dec. 4, 2020) (“When the Court uses the percentage-of-the-benefit method, it is not required to cross-check it against the lodestar method.”) (citing *Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017)); *In re Pork Antitrust Litig.*, CIVIL 18-1776 (JRT/JFD), at *20 (D. Minn. Sep. 14, 2022) (citing *Keil v. Lopez, supra*) (lodestar cross-check not required); *Jewell*, 167 F. Supp. 3d at 1241 (“district courts need not calculate a lodestar when applying the percentage method”) (citing *Gottlieb v. Barry*, 43 F.3d 474, 487 (10th Cir. 1994)); *Bacchi v. Mass. Mut. Life Ins. Co.*, No. 12-11280-DJC, slip op at 7 (D. Mass. Nov. 8, 2017) (noting that lodestar cross-check is discretionary); *Smith v. Krispy Kreme Doughnut Corp.*, No. 1:05CV00187, 2007 WL 119157, at *3 (M.D.N.C. Jan. 10, 2007) (noting that “[i]t is not necessary for the Court to conduct a lodestar analysis”); *Laffitte v. Robert Half Int’l Inc.*, 376 P.3d 672, 688 (Cal. 2016) (noting that courts “retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee”). This is not a case like *Health Republic Ins. Co. v. United States*, ___ F. 4th ___, 2023 WL 1113158 (Fed. Cir. Jan. 31, 2023), in which the class notice promised class members that a lodestar cross-check would be conducted.

and drag along proceedings to increase their lodestar.’”¹⁸² (See ¶ 36) It is not surprising, therefore, that even when approving relatively high percentage fee awards, a number of courts in the Eighth Circuit have used the percentage method without reference to a lodestar cross-check.¹⁸³ Many other jurisdictions follow a similar approach.¹⁸⁴ Indeed, in awarding attorneys’ fees of 30 percent in the \$410 million *Bank of America Checking Account Overdraft Litigation* settlement without conducting a lodestar cross-check, the court emphasized that “[t]he lodestar approach should not

¹⁸² *Jewell*, 167 F. Supp. 3d at 1242 (citation omitted).

¹⁸³ See, e.g., *Baldwin v. Nat’l W. Life Ins. Co.*, 2:21-CV-04066-WJE, at *3 (W.D. Mo. June 16, 2022) (calculating and approving attorneys’ fees by using the percentage method and without reference to a lodestar or lodestar cross-check); *Massey v. Shelter Life Ins. Co.*, No. 05-4106-CV-NKL, at *2 (W.D. Mo. Oct. 17, 2006) (same).

¹⁸⁴ See, e.g., *Swedish Hosp. v. Shalala*, 1 F.3d 1261, 1266–70 (D.C. Cir. 1993) (lodestar analysis not required); *Fankhouser v. XTO Energy, Inc.*, 2012 WL 4867715, at *3 (W.D. Okla. Oct. 12, 2012) (awarding 36 percent fee without lodestar cross-check); *Hill v. Marathon Oil Co.*, No. 5:08-cv-00037, slip op. at 5–6 (W.D. Okla. Oct. 3, 2012), available at <https://ecf.okwd.uscourts.gov/doc1/14912670884> (awarding 33⅓ percent fee without lodestar cross-check); *CompSource Okla. v. BNY Mellon, N.A.*, No. CIV 08-469-KEW, 2012 WL 6864701, at *8 (N.D. Okla. Oct. 25, 2012) (awarding 25 percent fee without lodestar cross-check); *Droegemueller v. Petroleum Dev. Corp.*, 2009 WL 961539, at *4 (D. Colo. Apr. 7, 2009) (awarding 33⅓ percent fee without lodestar cross-check); *Lewis v. Wal-Mart Stores, Inc.*, 2006 WL 3505851, at *2 (N.D. Okla. Dec. 4, 2006) (awarding 33⅓ percent fee without lodestar cross-check); *Millsap v. McDonnell Douglas Corp.*, No. 94-CV-633-H(M), 2003 WL 21277124, at *9 (N.D. Okla. May 28, 2003) (awarding 25 percent fee without lodestar cross-check); *CompSource Okla. v. BNY Mellon, N.A.*, No. CIV 08-469-KEW, 2012 WL 6864701, at *8 (N.D. Okla. Oct. 25, 2012) (noting, in not conducting a lodestar cross-check that, “a majority of circuits recognize that trial courts have the discretion to award fees based solely on a percentage of the fund approach and are not required to conduct a lodestar analysis in common fund class actions.”).

be imposed through the back door via a cross-check.”¹⁸⁵ In 2022, a federal court in Georgia cited my declaration in the *Githieya* case in concluding that a lodestar cross-check was not required.¹⁸⁶

D. In Any Event, a Lodestar Analysis Supports the Fees Requested

104. Even if the Court were to conduct a lodestar cross-check, such an analysis, in my opinion, would not cast doubt on the reasonableness of the fees requested by class counsel. In circuits where the cross-check is required, it is used primarily “to prevent counsel from receiving a windfall” and “does not supplant the court’s detailed inquiry into the attorneys’ skill and efficiency in recovering the settlement[.]”¹⁸⁷ The fee requested here is not a windfall.

¹⁸⁵ *In re Bank of Am. Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1362 (S.D. Fla. 2011). Likewise, numerous scholars have argued that courts should not use a lodestar cross-check when applying the percentage method. *See, e.g.*, Declaration of Brian T. Fitzpatrick at 6–7, *In re High-Tech Employees Antitrust Litig.*, No. 11-CV-2509-LHK (N.D. Cal.) (filed May 8, 2015), available at http://www.hightechemployeelawsuit.com/media/303927/15-5-8__1079__fitzpatrick_decl__motion_for_attorney_fees.pdf; MORRIS RATNER, CIVIL PROCEDURE: CLASS ACTION FEE AND COST AWARDS 30–32 THE JUDGE’S BOOK: Vol. 1, Article 9 (2017); Charles Silver, *Due Process and the Lodestar Method: You Can’t Get There From Here*, 74 TUL. L. REV. 1809, 1813–14 (2000).

¹⁸⁶ *Githieya v. Global Tel Link Corp.*, No. 1:15-cv-00986-AT (N.D. Ga. Aug. 30, 2022) (“The Court finds that a lodestar cross-check is not necessary here for the reasons set forth in the declaration of Professor Robert Klonoff.”).

¹⁸⁷ *In re Cardinal Health Inc. Sec. Litigations*, 528 F. Supp. 2d 752, 764 (S.D. Ohio 2007) (awarding fee that resulted in multiplier of 6).

105. The lodestar method involves “multipl[ying] the number of hours worked by the prevailing hourly rate.”¹⁸⁸ The court then considers the “less objective” factors of “the contingent nature of success” and the “quality of the attorneys’ work.”¹⁸⁹ I focus on these issues below.

1. The Hours Spent by Class Counsel Are Reasonable

106. I have been provided with copies of all time entries and hours summaries from Stueve Siegel Hanson and Miller Schirger. (I did not receive or review time records from the other firms.) Miller Schirger has spent 11,756 hours on the litigation, Stueve Siegel Hanson has spent 8,680 hours, and other firms have spent 2,674 hours on this litigation. In total, class counsel have spent 23,110 hours prosecuting this litigation.¹⁹⁰

107. I see no red flags suggesting that the work of the plaintiffs’ firms was inefficient or that there was needless duplication. Attorneys at the plaintiffs’ law firms targeted specific tasks: overseeing overall strategy and case management; performing legal research; drafting briefs and memoranda; preparing for trial and oral arguments (and conducting trial and oral arguments);

¹⁸⁸ *Vines v. Welspun Pipes Inc.*, 9 F.4th 849, 855 (8th Cir. 2021) (quoting *Childress v. Fox Assocs., LLC*, 932 F.3d 1165, 1172 (8th Cir. 2019); cf. *Skender v. Eden Isle Corp.*, 33 F.4th 515, 521 (8th Cir. 2022) (“the court may exclude hours that were not reasonably expended”).

¹⁸⁹ *Anderson v. Travelex Ins. Servs.*, 8:18-CV-362 (D. Neb. Sep. 22, 2021) (citing *Jorstad v. IDS Realty Trust*, 643 F.2d 1305, 1312-13 (8th Cir. 1981). *Accord*, e.g., *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 8:10-ml-02151-JVS (FMOx), 2013 WL 12327929, at *34 (C.D. Cal. July 24, 2013) (multiplier awarded based on “all the circumstances of [the] litigation, particularly the risks”); *Klein v. O’Neal, Inc.*, 705 F. Supp. 2d 632, 680 (N.D. Tex. 2010), *as modified* (June 14, 2010) (noting that a multiplier was “warranted due to the risks entailed in this litigation”); *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1271 (D. Kan. 2006) (finding multiplier resulting from lodestar cross-check “[e]minently reasonable based on the risks associated with counsel taking on this case”).

¹⁹⁰ See Siegel Att. Fees Decl. Appendix A.

reviewing, analyzing, and coding documents; preparing for and conducting depositions; and drafting discovery responses and pleadings. In this litigation, one partner had primary responsibility for class certification and summary judgment briefing; another was primarily responsible for technical issues involving plaintiffs' expert (Mr. Witt); still another was responsible for *Daubert* briefing. Moreover, the paralegals assigned to the case focused on traditional paralegal tasks, such as preparation of potential exhibits for trial and depositions; document management; assisting with filing of court documents; and performing basic research. I have seen nothing to suggest that the case was overstaffed, that there was needless duplication of effort, or that attorneys or paralegals were focusing on unnecessary tasks.

108. Moreover, as discussed in class counsel's supporting Declaration (Siegel Att. Fees Decl. ¶ 12), class counsel made great efforts to minimize duplication of tasks. Class counsel has advised me that they sent more than one attorney to a hearing or deposition only when there was a clear need for doing so. Class counsel obtained State Farm's agreement to use the depositions of State Farm's employees in *Vogt* and did not re-depose those witnesses in any of these cases. Furthermore, they consolidated the depositions of State Farm's experts across the cases, taking only one or two depositions of each of State Farm's four experts. Despite their efforts at efficiencies, the substantial hours were necessary. *See* Siegel Att. Fees Decl. ¶ 13. For example, State Farm deposed Mr. Witt 11 times after having deposed him three times in *Vogt*. There was significant briefing in each case, including voluminous summary judgment briefing that spanned different precedent in different cases. While class counsel used the same expert and same damages framework, the specific damages model in each case had to be tailored to the policyholder data for each class, new reports had to be produced, and ultimately Mr. Witt and class counsel had to

prepare for each deposition. The same point can be made with respect to State Farm’s multiple efforts to litigate class certification issues.

109. The billing records I reviewed confirmed class counsel’s descriptions. This is true for both of the principal law firms. (As noted, I did not review billing records for the local counsel.)

110. Indeed, the billing records I reviewed for the two principal law firms contained clear and complete descriptions of work performed, with time broken down into tenth-of-an-hour increments.

2. The Billing Rates Proposed by Class Counsel Are Reasonable

111. To gauge the reasonableness of class counsel’s rates, courts begin by referring to a reasonable hourly rate. “A reasonable hourly rate is usually the ordinary rate for similar work in the community where the case has been litigated.”¹⁹¹ But where “local community rates would not be sufficient to attract experienced counsel in a specialized legal field, the appropriate rate may be determined by reference to a national market or a market for a particular legal specialization.”¹⁹² Here, the litigation was nationwide in scope, involving lawsuits in numerous federal courts throughout the country. And it involved highly specialized universal life insurance

¹⁹¹ *Emery v. Hunt*, 272 F.3d 1042, 1048 (8th Cir. 2001) (citing *Avalon Cinema Corp. v. Thompson*, 689 F.2d 137, 140 (8th Cir. 1982) (en banc)).

¹⁹² *S.C. v. Riverview Gardens Sch. Dist.*, No. 18- 4162-CV-C-NKL, at *11 (W.D. Mo. Sep. 3, 2020) (cleaned up); see also *Dinosaur Merch. Bank v. Bancservices Int’l LLC*, No. 1:19 CV 84 ACL, at *8 (E.D. Mo. June 26, 2020) (noting that “in a specialized legal field, the appropriate rate may be determined by reference to a national market or a market for a particular legal specialization”) (cleaned up); *Am. Gen. Life Ins. Co. v. Vision*, No. 19-CV-3016-CJW-KEM, at *24 (N.D. Iowa Nov. 19, 2019) (same).

issues. Thus, it is appropriate to focus on a national market, not simply on rates within the Western District of Missouri.

112. The designated hourly rates for the two law firms submitting most of the lodestar hours range from \$675–\$1,125 for partners, \$700 for the ESI director, \$695 for an of counsel, \$450–\$750 for associates, \$225–\$340 for paralegals, \$225 for law clerks, and \$250–\$300 for staff. Courts have approved rates for prominent plaintiffs’ complex litigation firms that are comparable to those designated by the plaintiffs’ firms in this litigation. Stueve Siegel Hanson has an impressive record of having comparable rates approved, with several judicial opinions in 2018 and thereafter approving rates for firm personnel as high as \$1,125 for partners, \$695 for associates, and \$340 for paralegals.¹⁹³

113. Indeed, even higher rates than those requested here would be justified given the complicated, multi-jurisdictional nature of this case.¹⁹⁴ For example, in *Volkswagen Clean Diesel*,

¹⁹³ See, e.g., *Hays v. Nissan N. Am. Inc.*, No. 4:17-CV-0353-BCW (W.D. Mo. Sept. 30, 2022) (\$1,125 for partners, \$695 for associates, \$340 for paralegals); *In re Equifax Customer Data Sec. Breach Litig.*, 2020 U.S. Dist. LEXIS 118209, at *259 (N.D. Ga. Mar. 17, 2020) (approving, *inter alia*, partner rates ranging from \$935 (for Mr. Siegel) to \$1,050 per hour), *aff’d in relevant part*, 999 F.3d 1247 (11th Cir. 2021); *Hapka v. Carecentrix, Inc.*, No. 2:16-cv-02372-KGG, slip op. at 3 (D. Kan. Feb. 15, 2018), *available at* <https://ecf.ksd.uscourts.gov/doc1/07914925572> (*citing* Pls.’ Mem. in Support of Mot. for an Award of Attorneys’ Fees, Expenses, & Costs to Class Counsel & a Class Representative Service Award at 13–20 (filed Dec. 8, 2017)); *Criddell v. Premier Healthcare Services, LLC*, No. 16-cv-05842-R-KS (C.D. Cal. Jan. 16, 2018) (Dkt. No. 64) (approving hourly partner rate of \$825 and hourly associate rate of \$395); *Spangler v. Nat’l Coll. of Tech. Instruction*, No. 14-cv-03005-DMS (RBB), 2018 WL 846930, at *2 (S.D. Cal. Jan. 5, 2018) (approving Stueve Siegel Hanson’s 2016 rates of \$795 to \$825 per hour for partners and \$315 to \$525 per hour for associates).

¹⁹⁴ See, e.g., *Jeffboat LLC v. Office of Workers’ Comp. Programs*, 553 F.3d 487, 490 (7th Cir. 2009) (noting that the “national market” is relevant to complex cases where the attorneys involved are “highly specialized”); *Jane L. v. Bangerter*, 61 F.3d 1505, 1510 (10th Cir. 1995)

class counsel's hourly rates were as high as \$1,600 for partners and \$790 for associates.¹⁹⁵ And in *Nitsch v. DreamWorks Animation SKG, Inc.*, billing rates for partners were as high as \$1,200 per hour.¹⁹⁶ In *In re LTL Management*, the court determined that rates ranging from \$1,000 to

(noting that the relevant market may be expanded where “special skills” are required by the litigation); *In re Agent Orange Prods. Liab. Litig.*, 818 F.2d 226, 232 (2d Cir. 1987) (approving “the use of national hourly rates in exceptional multiparty cases of national scope”); *Urethane*, 2016 WL 4060156, at *7 (“[T]he amounts at issue justified use of the best counsel charging the highest rates (just as [the defendant] used similarly high-priced counsel in the litigation.)”); *In re Vioxx Prods. Liab. Litig.*, 760 F. Supp. 2d 640, 660 (E.D. La. 2010) (“[T]he attorneys come from states across the country. Thus a more national rate is the appropriate pole star to guide the Court.”); *Lucas v. Kmart Corp.*, No. 99-cv-01923, 2006 WL 2729260, at *4 (D. Colo. July 27, 2006) (“Hourly rates must reflect the prevailing market rates in the relevant community. Because of the significant resources and skill required, as well the risks entailed, to litigate large-scale actions on behalf of a class, very few attorneys handle such cases. Thus the relevant community . . . likely consists of attorneys who litigate nationwide, complex class actions.”).

¹⁹⁵ *In re Volkswagen “Clean Diesel” Marketing, Sales Practices & Prods Liab. Litig.*, No. 3:15-md-02672-CRB, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017).

¹⁹⁶ No. 14-CV-04062-LHK, 2017 WL 2423161, at *9 (N.D. Cal. June 5, 2017). *See also*, e.g., *Whiteley v. Zynherba Pharm.*, Civil Action 19-4959, at *27 (E.D. Pa. Sep. 16, 2021) (hourly rates up to \$1100 were reasonable and appropriate considering the market, skill level, and experience of the attorneys); *In re Cathode Ray Tube (Crt) Antitrust Litig.*, MDL 1917, No. 3:07-cv-5944 JST, 2016 WL 721680, at *43 (N.D. Cal. Jan. 28, 2016) (finding \$875/hr for lead counsel “reasonable and responsible” for purposes of lodestar cross-check in antitrust class settlement); *In re Amgen Sec. Litig.*, No. CV 7-2536 PSG, 2016 U.S. Dist. LEXIS 148577, at *27 (C.D. Cal. Oct. 25, 2016) (approving “a billing rate ranging from \$750 to \$985 per hour for partners, \$500 to \$800 per hour for ‘of counsels’/senior counsel, and \$300 to \$725 per hour for other attorneys”); *Abbott v. Lockheed Martin Corp.*, No. 06-cv-701-MJR-DGW, 2015 WL 4398475, at *3 (S.D. Ill. July 17, 2015) (awarding fees of \$974/hr for attorneys with at least 25 years of experience; \$826/hr for attorneys with 15–24 years in ERISA class settlement); *In re High-Tech Employee Antitrust Litig.*, No. 11-CV-2509-LHK, 2015 WL 5158730, at *9 (N.D. Cal. Sept. 2, 2015) (billing rates for partners as high as \$975/hr); *Cheesemore v. Alliance Holdings, Inc.*, No. 09-cv-413-wmc, 2014 WL 4415919, at *6 (W.D. Wis. Sept. 5, 2014) (approving rate of \$895/hr for highest level partners in ERISA class settlement); *In re Heartland Payment Systems, Inc.*, 851 F. Supp. 2d 1040, 1087–88 (S.D. Tex. 2012) (noting hourly rates as high as \$825/hr; court found the hourly rates were “within the ‘prevailing market rates for lawyers with comparable experience and expertise’ in complex class-action litigation and thus are reasonable.”) (citation omitted); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 10-ml-02151

\$1,875 per hour were reasonable for highly skilled partners in a bankruptcy trustee action.¹⁹⁷ Here, all of the proposed rates are at or below \$1,125 per hour, despite the prominence and vast experience of the attorneys involved.

114. The rates proposed by the plaintiffs' firms here are also extremely reasonable when compared to rates for prominent defense firms, including State Farm's law firms here. It is instructive, in gauging billing rates for class counsel, to look at rates for the firm actually representing the defendant in the litigation.¹⁹⁸

NS, 2013 WL 12327929, at *33 n.15 (C.D. Cal. July 24, 2013) (approving rates up to \$950 per hour). Rates for paralegals in other major class actions have ranged from \$150 to \$490 per hour. *See, e.g., In re Volkswagen*, 2017 WL 1047834, at *5 (\$150 to \$490 per hour); Co-Lead Class Counsel's Pet. for An Award of Atty's Fees at Add. 1, Ex. C, *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 12-MD-2323 (AB) (E.D. Pa.) (filed Feb. 13, 2017) (\$215 to \$325 per hour); *Astiana v. Kashi Co.*, No. 11-cv-01967-H (BGS), slip op. at 6 (S.D. Cal. Sept. 2, 2014) (Dkt. No. 241) (\$245 to \$315 per hour).

¹⁹⁷ No. 21-30589, at *6–9 (Bankr. D.N.J., May 20, 2022); *see also* Roy Strom, *Big Law Rates Topping \$2,000 Leave Value 'In Eye of Beholder'*, BLOOMBERG, (Jan. 26, 2023) <https://news.bloomberglaw.com/business-and-practice/big-law-rates-topping-2-000-leave-value-in-eye-of-beholder>; Karen Sloan, *Lawyer's \$2,465 Hourly Rate Draws Objection in J&J Talc Bankruptcy Case*, REUTERS, (May 24, 2022).

¹⁹⁸ *See, e.g., Chrapliwy v. Uniroyal, Inc.*, 670 F.2d 760, 768 n.18 (7th Cir. 1982) (“The rates charged by the defendant’s attorneys provide a useful guide to rates customarily charged in this type of case.” (citation omitted)); *Ruiz v. Estelle*, 553 F. Supp. 567, 589 (S.D. Tex. 1982) (“In an action for which no adequate parallel can be found, the best example of a fee paid for similar work is that paid by opposing counsel in the same action.”); *cf. I.W. v. School Dist. of Philadelphia*, No. 14-3141, 2016 WL 147148, at *13 (E.D. Pa. Jan. 13, 2016) (“Evidence of the hours expended by the non-prevailing party on the same task is relevant to the determination of whether the hours requested by the prevailing party are reasonable.” (citations omitted)); *Mitroff v. Xomox Corp.*, 631 F. Supp. 25, 28 (S.D. Ohio 1985) (“Pertinent to any consideration of a reasonable amount of time expended in the prosecution of a law suit is the amount of time expended by the defendant in defending that law suit.”).

115. Here, partners at State Farm’s law firms bill at substantially higher rates than plaintiffs’ counsel here are proposing. For instance, Gibson Dunn partners reportedly bill as high as \$1,625 per hour.¹⁹⁹ Even back in 2015, a fee application of Gibson Dunn revealed rates for partners in a bankruptcy case as high as \$1,475.²⁰⁰ And a 2019 fee application of Gibson Dunn shows that bankruptcy partners bill from \$1,095 to \$1,285 and associates bill from \$850 to \$945.²⁰¹ Other sources confirm similarly high rates for Alston & Bird. A 2019 fee application of Alston & Bird revealed that the firm’s partners bill from \$700 to \$925 per hour, and associates bill from \$385 to \$630 per hour.²⁰²

116. The same is true for other major defense law firms. In recent years, some partners at several major law firms have been billing at \$1900 or more per hour.²⁰³ Hogan Lovells has

¹⁹⁹ Tiffany Stecker, *Gibson Dunn Lawyers Hired by California Redistricting Commission*, Bloomberg Law (June 30, 2021, 8:18 PM), https://www.bloomberglaw.com/bloomberglawnews/business-and-practice/X16EFV3G000000?bna_news_filter=business-and-practice#jcite.

²⁰⁰ See Final Application of Gibson, Dunn & Crutcher LLP as General Bankruptcy and Restructuring Co-Counsel for Debtors and Debtors-in-Possession for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for the Final Period Mar. 12, 2015–Nov. 19, 2015, at 4, *In re SRC Liquidation, LLC*, No. 15-10541-BLS (Bankr. D. Del.) (Dkt. No. 1404) (filed Dec. 15, 2015).

²⁰¹ See Summary of Seventh Monthly Application of Gibson, Dunn & Crutcher LLP as Co-Counsel to the Debtors and Debtors-in-Possession for Allowance of Compensation and Reimbursement of Expenses Incurred for the Interim Period from February 1, 2019 Through and Including February 28, 2019, at 2, *In re Brookstone Holdings Corp.*, No. 18-11780-BLS (Bankr. D. Del.) (Dkt. No. 1125) (filed Mar. 18, 2019).

²⁰² See First and Final Application For Approval of Compensation And Reimbursement of Expenses For Alston & Bird Llp as General Reorganization Counsel For Debtor, at 8, *In re XTAL Inc.*, No. 18-52770-MEH (Bankr. N.D. Cal.) (Dkt. No. 247) (filed June 26, 2019).

²⁰³ See Strom, *supra* note 197 (identifying numerous firms as examples).

advised a bankruptcy court that the hourly rate for partners is between \$950 and \$2,465, \$910–\$1,735 for counsel, \$605–\$1,055 for associates, and \$275–\$550 for paralegals.²⁰⁴

117. Even data from several years ago supports rate of well over \$1,000 per hour for senior partners. For instance, a 2016 American Bar Association report (relying on public filings in Chapter 11 bankruptcy cases) noted billing rates as high as \$1,475 at Proskauer Rose; \$1,450 at Ropes & Gray; and \$1,425 at both Akin Gump Strauss Hauer & Feld and Skadden Arps Slate Meagher & Flom.²⁰⁵ Indeed, according to some sources (discussing rates in 2014 and 2015), some prominent partners at top law firms have billing rates as high as \$2,000 per hour.²⁰⁶ For associates, a 2011 study found rates at DLA Piper as high as \$730; at Kay Scholer, rates as high as \$705; and

²⁰⁴ See Objection of the United States Trustee to Debtor’s Application for Retention of Hogan Lovells Us Llp as Special Counsel, Effective as of April 4, 2022, at 5, *In re LTL Management*, No. 21-30589 (MKB) (Bankr. D.N.J.) (Dkt. 2324) (filed May 20, 2022); *but see* No. 21-30589, at *6–9 (Bankr. D.N.J., May 20, 2022) (concluding that \$1,875 per hour was reasonable for highly skilled partners in a bankruptcy trustee action, while rejecting rates of \$2,465 per hour as unreasonable).

²⁰⁵ See Martha Neil, *Top Partner Billing Rates at BigLaw Firms Approach \$1,500 Per Hour*, ABA JOURNAL (Feb. 8, 2016), http://www.abajournal.com/news/article/top_partner_billing_rates_at_biglaw_firms_nudge_1500_per_hour.

²⁰⁶ See, e.g., Aebra Coe, *What Do the Highest-Paid Lawyers Make an Hour?*, Law360 (May 11, 2016), <https://www.law360.com/legalindustry/articles/794929/what-do-the-highest-paid-lawyers-make-an-hour-> (noting that research conducted by the BTI Consulting Group revealed that rates “reached \$2,000 per hour” in 2016, up from the previous high of \$1,600 per hour in 2015); Kathryn Rubino, *\$2,000 An Hour Lawyers: That’s One Way to Fund Salary Increases*, ABOVE THE LAW (June 13, 2016), <https://abovethelaw.com/2016/06/2000-an-hour-lawyers-thats-one-way-to-fund-salary-increases/> (similar); see also Karen Sloan, *\$1,000 Per Hour Isn’t Rare Anymore*, NAT’L L.J. (Jan. 13, 2014), <https://www.law.com/nationallawjournal/almID/1202637587261/NLJ-Billing-Survey%3A-%241%2C000-Per-Hour-Isn%27t-Rare-Anymore/> (noting that “four-figure hourly rates for in-demand partners at the most prestigious firms don’t raise eyebrows—and a few top earners are closing in on \$2,000 an hour”).

at Winston & Strawn, rates as high as \$600.²⁰⁷ Naturally, today's rates for partners and associates at prominent firms are even higher, and as noted, rates at or above \$1,900 per hour for partners appear to be increasingly common.²⁰⁸ At Covington, for example, junior associates bill at \$595 per hour and senior partners bill from \$1,445 to \$2,300 per hour.²⁰⁹

118. The rates designated by the plaintiffs' attorneys and paralegals (and other staff) in the present case are comparable to (or below) the above-described billing rates of major defense firms. Importantly, no attorney from any of the plaintiffs' firms proposes rates for partners more than \$1,125 per hour, and even that rate was designated solely for two senior Stueve Siegel partners who of course also delegated significant work to attorneys billing at lower rates. Likewise, the range of billing rates of the associate attorneys involved here—\$450 to \$750—is significantly less than many defense firms charge. Indeed, the hourly rates for a number of the

²⁰⁷ See *A Nationwide Sampling of Law Firm Billing Rates*, NAT'L L.J. (Dec. 19, 2011), available at http://tqmlaw.com/global_pictures/NationalLawJournal2011.PDF.

²⁰⁸ See, e.g., Strom, *supra* note 197 (noting that Hogan Lovells bills up to \$2,465 per hour and Latham & Watkins bills up to \$2,075 per hour); Debra Cassens Weiss, *BigLaw partner's hourly billing rate of nearly \$2,500 draws objection from bankruptcy trustee*, ABA Journal (May 25, 2022), <https://www.abajournal.com/news/article/biglaw-partners-hourly-billing-rate-of-nearly-2500-draws-objection-from-bankruptcy-trustee> (noting that billing rates “have been creeping toward the \$2,000 mark”); Hugh A. Simons, *Why Elite Law Should Raise Rates*, THE AM. LAWYER (Feb. 26, 2018), <https://www.law.com/americanlawyer/2018/02/26/why-elite-law-should-raise-rates/> (noting that attorneys' hourly billing rates “rose by 33 percent from 2007 to 2017” and that rates continue to increase, “with standard rates rising at 3 percent [per year]”).

²⁰⁹ Debra Cassens Weiss, *This former attorney general now bills for BigLaw at nearly \$2,300 per hour*, ABA Journal, (April 19, 2021), <https://www.abajournal.com/news/article/this-former-attorney-general-now-bills-for-biglaw-at-nearly-2300-an-hour>; see also *Lechner v. Mut. of Omaha Ins. Co.*, 8:18CV22, at *5 (D. Neb. Feb. 8, 2021) (noting class counsel's “rates of between \$535.00 per hour and \$970.00 per hour for attorneys . . . are within the range of market rates for attorneys of their experience and expertise”).

Miller Schirger *partners* involved here are in line with that of *associates* at Gibson Dunn. Moreover, as noted (§ 112), the plaintiffs' law firms involved here have been awarded hourly rates comparable to those requested here.

119. The blended rate for Stueve Siegel Hanson in this case is \$792.47 per hour. The blended rate for Miller Schirger is \$706 per hour. The other firms' blended rate is \$669.06 per hour. These rates are consistent with or below blended rates in various other major multi-state class actions. For example, in *NFL Concussion*, the court approved a blended rate of \$861.28 per hour for Seeger Weiss specifically, and a blended rate of \$623.05 per hour for all common benefit counsel.²¹⁰ In *Jackson County v. Trinity Industries*, the two principal law firms here obtained approval of a \$662 blended rate.²¹¹

120. In any event, in my opinion, it is not particularly useful to compare the blended rate here with blended rates in other cases, especially those in which the tasks performed were very different. Here, class counsel used the same team to prosecute this case, and the related cases, that it used in the *Vogt* case—several of whom I understand were associates when that case started but are now partners. It would not have been efficient or beneficial to the settlement class to replace these experienced and successful attorneys with less experienced attorneys who knew little or nothing about the State Farm litigation. In addition, much of the work was, by its very

²¹⁰ See *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, slip op. at 20-21 (E.D. Pa. May 24, 2018) (Dkt. No. No. 10019) (approving lodestar for Seeger Weiss); *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1635648, at *9 (E.D. Pa. Apr. 5, 2018) (approving blended rate of \$623.05 per hour for all common benefit counsel).

²¹¹ *Jackson Cnty. V. Trinity Indus.*, No. 1516-CV23684, at *4 (Cir. Ct. Mo. 2022).

nature, high-level work and thus not suitable for a paralegal or low-level attorney.²¹² For example, the firm could not assign paralegals or recent law school graduates to brief and argue class certification motions, conduct high-level settlement negotiations, interview and work with experts, or brief and argue complicated legal issues in trial or appellate courts. It should not be surprising, therefore, that of the 14 attorneys involved from Miller Schirger and Stueve Siegel Hanson, the top four billers (three with more than 3,000 hours and one with more than 2,500 hours) are partners. Given the nature of the tasks that make up many of the hours spent by class counsel, the blended rate here is very reasonable. Simply comparing the blended rates here to those in other cases—in which the mix of tasks performed may have been very different—is not a very probative exercise.

E. Additional Expected Hours Should Be Included

121. When calculating the lodestar, courts routinely take into account hours that class counsel reasonably anticipate spending on the matter after final approval (*e.g.*, hours to be spent on claims administration issues).²¹³ In addition to the 23,110 hours they have spent on the case

²¹² See, *e.g.*, *Young v. Polo Retail, LLC*, No. 02-cv-4546-VRW, 2007 WL 951821, at *7 (N.D. Cal. Mar. 28, 2007) (“[T]he central role of settlement negotiations in this litigation—and the central role of senior attorneys in those negotiations—suggest that typical blended hourly rates . . . are inappropriate here.”).

²¹³ See, *e.g.*, *Tennille v. Western Union Co.*, No. 09-cv-00938-MSK-KMT, 2013 WL 6920449, at *3 (D. Colo. Dec. 31, 2013) (instructing plaintiffs to include in their lodestar calculation “an estimate of the future hours that will be necessary to carry the case to completion under the Settlement Agreement”); *Reyes v. Bakery & Confectionery Union*, 281 F. Supp. 3d 833, 853, 856–57 (N.D. Cal. 2017) (including estimated hours for “future work” related to, *inter alia*, “managing class members’ claims”); *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), slip op at 8 (N.D. Cal. Mar. 17, 2017) (granting fee request reserving “an additional 21,000 hours to (1) guide the hundreds of thousands of Class Members through [claims period]; (2) assist in the implementation and supervision of the

to date, class counsel expect to spend at least 1,888 hours in the future due to the size of the class and the scope of the settlement administration process. Siegel Att. Fees Decl. ¶ 6. This estimate is based on class counsel’s experience in two prior cost of insurance settlements. It is conservative because it does not account for any possible appellate work if there are objections and appeals to the settlement. Additional work will include managing the settlement, responding to class member inquiries, ensuring class members receive their distributions, and overseeing the settlement administration. In particular, when the settlement provides for the distribution of checks without claim forms being submitted, there are likely to be a substantial number of uncashed or returned checks. Likewise, given that the class spans policyholders who purchased their policy decades ago, the death of policyholders will likely raise a significant number of individual issues that need to be managed, probably for years to come. For example, I am advised that class counsel have already started receiving inquiries by beneficiaries and heirs who received the notice on behalf of a deceased class member. As noted, there is authority that such post-settlement approval hours should be included in the lodestar.

F. The Multiplier Is Well Justified Based on the Facts

122. Based on the 23,110 hours expended thus far and the hourly rates proposed, class counsel’s lodestar would be \$16,977,873. That calculates to a multiplier of 6.4, not counting hours going forward. Counting 1,888 hours going forward as well (based on class counsel’s estimate),

Settlement . . . ; and (3) defend and protect the settlement on appeal, among other things” (cleaned up)); *AT&T Mobility*, slip op at 16–17 (*citing* the “considerable ongoing efforts” required of class counsel to implement the settlement as a “factor [that] supports a generous reward”).

the total lodestar is \$18,364,930 using the overall blended rate of \$734.67 for the 1,888 anticipated hours, resulting in a multiplier of 5.9. In my view, either multiplier is fully justified here.

123. As a threshold matter, I believe that class counsel are clearly entitled to more than just their hours multiplied by their hourly rates. When using the lodestar method to calculate fees, courts often apply a multiplier “to compensate for the risk of [the] litigation.”²¹⁴ When using the lodestar as a cross-check on a percentage-based fee, the multiplier is simply designed to assess whether there are reasons to question the reasonableness of the resulting fee. In analyzing the multiplier, the ultimate standard is “reasonableness,” and courts often look to those *Johnson* factors that are not already subsumed within the lodestar calculation (excluding, for example, “the time and labor involved,” because class counsel’s hours and rates are already accounted for by the lodestar).²¹⁵

124. In this case, there is no question that class counsel reasonably expected to be awarded more than just their hours multiplied by their hourly rates (assuming that the Court were to apply the lodestar method as the primary method or as a cross-check). As explained in ¶¶ 45–

²¹⁴ *Been*, 2011 WL 4478766, at *10.

²¹⁵ *See, e.g., Keil v. Lopez*, 862 F.3d 685, 697 (8th Cir. 2017) (“To determine the reasonableness of a fee award . . . , district courts may consider relevant factors from the twelve factors listed in *Johnson*”); *In re Miniscribe Corp.*, 309 F.3d 1234, 1243 (10th Cir. 2002) (applying “*Johnson* criteria for determining the multiplier . . . to be applied to the lodestar amount”); *Swinton v. Squaretrade, Inc.*, 454 F. Supp. 3d 848, 884 (S.D. Iowa 2020) (“the lodestar amount can be adjusted, up or down, to reflect the individualized characteristics of a given action . . . [and courts] must consider relevant factors from the twelve [*Johnson*] factors”) (cleaned up); *Koehler v. Freightquote.com, Inc.*, No. 12-2505-DDC-GLR, 2016 WL 3743098, at *6–9 (D. Kan. July 13, 2016) (approving class counsel’s requested multiplier where “the other *Johnson* factors demonstrate[d] the reasonableness of the fee”).

62, class counsel took on litigation that entailed enormous risk and challenges. It would be illogical and unfair to rely solely on standard billing rates, without enhancement, in a situation where there was a serious likelihood that class counsel would recover nothing. Class counsel's designated hourly rates do not reflect that risk. As noted, those rates are in line with (or below) those awarded to plaintiffs' firms (before factoring in a multiplier) in other major class actions. See ¶¶ 112–113. And they are comparable to—or below—what prominent defense firms charge (see ¶¶ 115–118), even though such defense firms are paid their hourly rates regardless of whether they win or lose.²¹⁶

125. A multiplier of either 5.9 or 6.4, while higher than average, is not high here given that this is anything from a routine or average case. This litigation entailed enormous risk, as detailed above (see ¶¶ 45–62), and class counsel had to litigate against a defendant that was willing to spend whatever it took to achieve success.

126. A lodestar multiplier “need not fall within any pre-defined range, so long as the court’s analysis justifies the award, such as when the multiplier is in line with multipliers used in other cases.”²¹⁷ In the present context, other courts have noted similar case-specific factors in upholding multipliers greater than 5.9 or 6.4, especially where (as here) class counsel achieved extraordinary results. For example, in approving a multiplier of 6 in *Cardinal Health*, the district

²¹⁶ See, e.g., *Lowery v. City of Albuquerque*, No. CIV 09-0457 JB/WDS, 2013 WL 1010384, at *44 (D.N.M. Feb. 27, 2013) (noting that class counsel “had to take considerable risks so its hourly rate should be more”); see also note 215, *supra* (cases noting multiplier’s role in compensating plaintiffs’ attorneys based on various *Johnson* factors).

²¹⁷ *In re Xcel Energy, Inc., Secs., Derivative & “ERISA” Litig.*, 364 F. Supp. 2d 980, 999 (D. Minn. 2005).

court noted that “the risk of non-recovery [was] the most important factor in the fee determination.”²¹⁸ Similarly, in the *Toyota Unintended Acceleration* case, the district court emphasized that a multiplier should be awarded based on “all the circumstances of [the] litigation, particularly the risks.”²¹⁹ In *Rite Aid*, the court noted, in approving a 6.96 multiplier, that (like the historic life insurance settlement here) the case involved the largest recovery against an auditor in a Rule 10b-5 securities action.²²⁰ Similarly, in *Cardinal Health*, the court approved a multiplier of 6, even though it was outside “the normal range of lodestar multipliers,” emphasizing the “outstanding settlement” and the “noticeable skill of counsel.”²²¹ Likewise, in *Credit Default Swaps*, the court approved a lodestar multiplier “of just over 6,” noting the enormous time expended, the risk undertaken, and “[t]he quality of work performed on behalf of the class by its counsel,” which the court characterized as “superb.”²²² These points apply fully here.

127. Notably, the Eighth Circuit has noted that a multiplier of 5.3 “does not exceed the bounds of reasonableness.”²²³ Likewise, the Ninth Circuit upheld a multiplier of 6.85 in *Steiner v. American Broadcasting Co., Inc.*, emphasizing that it was “well within the range of

²¹⁸ 528 F. Supp. 2d at 766.

²¹⁹ *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 8:10-ml-02151-JVS (FMOx), 2013 WL 12327929, at *34 (C.D. Cal. July 24, 2013) (emphasis added).

²²⁰ 362 F. Supp. 2d 587, 589–90 (E.D. Pa. 2005).

²²¹ *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752 (S.D. Ohio 2007).

²²² No. 1:13-md-02476, 2016 WL 2731524 (S.D.N.Y. Apr. 26, 2016).

²²³ *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019) (citation omitted).

multipliers that courts have allowed.”²²⁴ Another court has noted that “[c]ourts regularly award lodestar multipliers of up to *eight* times the lodestar, and in some cases, even higher multipliers.”²²⁵ And in *In re Charter Communications Securities Litigation* the court noted, in awarding a multiplier of 5.61, that the multiplier was “fully justified here given the effort required, the hurdles faced and overcome, and the results achieved.”²²⁶

128. Importantly, I believe the multiplier here can be explained in large part by class counsel’s lean and efficient staffing of the case (*see* ¶¶ 106–108). Counsel could have ensured a higher lodestar (and thus a lower multiplier) by adding attorneys even when additional assistance was not essential or by duplicating work already performed in *Vogt*. But they should be commended—not penalized—for taking a lean staffing approach. As the Eighth Circuit has

²²⁴ 248 F. App’x 780, 783 (9th Cir. 2007).

²²⁵ *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) (emphasis added). *See also, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6, app. (9th Cir. 2002) (collecting cases applying multipliers ranging as high as 19.6); *In re Credit Default Swaps Antitrust Litig.*, No. 1:13-md-02476, 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) (multiplier of 6.2); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (multiplier of 6); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589–90 (E.D. Pa. 2005) (multiplier of 6.96); *Stop & Shop Supermarket Co. v. Smith-Kline Beecham Corp.*, No. Civ. A. 03-4578, 2005 WL 1213926, at *18 (E.D. Pa. May 19, 2005) (multiplier of 15.6); *In re Buspirone Antitrust Litig.*, No. 1:01-md-01413-JGK, slip op. at 8 (S.D.N.Y. Apr. 18, 2003) (Dkt. No. 171) (multiplier of 8.46); *Newman v. Carabiner International, Inc.*, No. 1:99-cv-02271, slip op. at 11 (S.D.N.Y. Oct. 25, 2001) (Dkt. No. 31) (multiplier of 7.7); *In re 3COM Corp. Sec. Litig.*, No. C-97-21083, slip op. at 12 (N.D. Cal. Mar. 9, 2001) (multiplier of 6.67); *In re Merry-Go-Round Enterprises, Inc.*, 244 B.R. 327, 335 (Bankr. D. Md. 2000) (multiplier of 19.6); *Perera v. Chiron Corp.*, No. 95-20725-SW (N.D. Cal. 1999) (multiplier of 9.14), *cited in* ELIZABETH J. CABRASER, CALIFORNIA CLASS ACTIONS AND COORDINATED PROCEEDINGS § 15.05 (2d ed. 2017).

²²⁶ No. 4:02-cv-01186-CAS, 2005 WL 4045741, at *18 (E.D. Mo. June 30, 2005).

cogently recognized, it would be unfair to “penalize counsel” for acting efficiently.²²⁷ A multiplier even higher than that sought here has been deemed appropriate where, as here, “through the exercise of their considerable skill, plaintiffs’ counsel obtained a historic recovery for the class in a rare and complex kind of case where victory at trial would have been, at best, remote and uncertain.”²²⁸

129. Another appropriate way to measure the multiplier is to look at the results obtained in *Vogt* and the total attorneys’ fees, including what was awarded in *Vogt*. This is similar to how MDL courts often look at fee awards when individual cases within the overall litigation are resolved at different times. In those cases, the total fee across all the cases is measured against the full lodestar across all the cases. Class counsel report that their lodestar in *Vogt*, using the hourly rates they had when they were paid in *Vogt*, was \$6,513,961, which is hardly surprising given that they litigated a class action through trial, two full appeals, and through a petition for certiorari to the U.S. Supreme Court. So, class counsel’s total received fee in *Vogt* (\$13,866,666), the requested fee in this case (\$108,333,333), and a lodestar of \$24,878,891—which represents class counsel’s work on this litigation, the 1,888 hours class counsel anticipates spending going forward, and the hours worked in *Vogt*—leads to a multiplier of 4.9, which is easily justified by precedent even for more routine cases.

²²⁷ *Rawa v. Monsanto Co.*, 934 F.3d at 870.

²²⁸ *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 590 (E.D. Pa. 2005) (approving multiplier of 6.96).

G. The Multiplier Is Well Justified in Comparison with Other Mega-Fund Cases

130. Multipliers at levels comparable to (or well in excess of) the 5.9–6.4 multiplier sought here have been approved in numerous mega-fund cases. Such cases include the following:

TABLE 2: Multipliers Over 5.0 in Mega-Fund Class Actions

Case	Recovery	Multiplier	Trial?
<i>Stop & Shop Supermarket Co. v. Smith-Kline Beecham Corp.</i> , No. 03-cv-04578, 2005 WL 1213926 (E.D. Pa. May 19, 2005)	\$100 million	15.6	No
<i>Lobo Exploration Co. v. BP Am. Prod.</i> , No. CJ-1997-72 (Oka. Dist. Ct., Beaver Cnty. Dec. 8, 2005)	\$150 million	8.7	No
<i>In re Buspirone Antitrust Litig.</i> , No. 1:01-md-01413-JGK (S.D.N.Y. Apr. 18, 2003) (Dkt. No. 171)	\$220 million	8.46	No
<i>New England Carpenters Health Benefits Fund v. First Databank, Inc.</i> , No. CIV.A. 05-11148PBS, 2009 WL 2408560 (D. Mass. Aug. 3, 2009)	\$350 million	8.3	No
<i>In re Rite Aid Corp. Sec. Litig.</i> , 362 F. Supp. 2d 587 (E.D. Pa. 2005)	\$126.6 million	6.96	No
<i>In re Cendant Corp. Litig.</i> , 243 F. Supp. 2d 166 (D.N.J. 2003), <i>aff'd</i> , 404 F.3d 173 (3d Cir. 2005)	\$3.18 billion	6.87	No
<i>In re 3COM Corp. Sec. Litig.</i> , No. C-97-21083 (N.D. Cal. Mar. 9, 2001)	\$259 million	6.67	No
<i>In re Credit Default Swaps Antitrust Litig.</i> , No. 1:13-md-02476, 2016 WL 2731524 (S.D.N.Y. Apr. 26, 2016)	\$1.86 billion	6.2	No

Case	Recovery	Multiplier	Trial?
<i>In re Cardinal Health Inc. Sec. Litig.</i> , 528 F. Supp. 2d 752 (S.D. Ohio 2007)	\$600 million	6	No
<i>In re Charter Commc'ns, Inc. Sec. Litig.</i> , No. 4:02-cv-01186-CAS, 2005 WL 4045741 (E.D. Mo. June 30, 2005)	\$146.2 million	5.6	No
<i>Roberts v. Texaco</i> , 979 F. Supp. 185 (S.D.N.Y. 1997)	\$115 million	5.5	No
<i>Gutierrez v. Wells Fargo Bank, N.A.</i> , No. C 07-05923 WHA (N.D. Cal. May 21, 2015)	\$203 million	5.5	Yes
<i>In re Enron Corp. Sec., Derivative & ERISA Litig.</i> , 586 F. Supp. 2d 732 (S.D. Tex. 2008)	\$7.22 billion	5.21	No

131. Here, a multiplier of 5.9–6.4 for class counsel is well justified under the case law because class counsel took on a challenging and risky case with extremely complex legal and factual issues; prosecuted it skillfully over the course of several years in multiple jurisdictions without assistance from any official investigation; obtained class certification despite State Farm’s vigorous opposition; conducted a complete classwide trial that resulted in an impressive \$34 million jury verdict; and obtained a historic \$325 million settlement for the class.

H. The Multiplier Is Supported by the Relevant *Johnson* Factors

132. The reasonableness of the 5.9–6.4 multiplier, and by extension the 4.9 multiplier that factors in *Vogt*, is further confirmed by those *Johnson* factors that are not already subsumed by the lodestar calculation. In particular, this is an unusually complicated case, with difficult legal and factual issues, and it involved contested class certification motions, contentious summary

judgment, Rule 12(b)(6), and *Daubert* motions. Class counsel took on substantial risk, were precluded to a significant extent from doing other work, and achieved an enormous and historic \$325 million settlement.

I. Conclusion on Attorneys' Fees

133. The attorneys' fees sought (33⅓ percent) are well justified based on the percentage method and remain fully justified and reasonable even if this Court were to analyze the fees under a lodestar cross-check.

VIII. OUT-OF-POCKET EXPENSES

A. The Out-of-Pocket Expenses Sought by Class Counsel are Reasonable

134. Under the settlement, class counsel are allowed to seek up to \$1.5 million in actual expenses without objection from State Farm. Class counsel seek actual out-of-pocket costs in the amount of \$1,358,443.06. Siegel Att. Fees Decl. ¶ 27. The largest components of these costs are for experts, online legal research, travel expenses, and class notice and administration. Siegel Decl. Appendix B. It is well settled that an attorney “who creates or preserves a common fund by judgment or settlement for the benefit of a class is entitled to receive reimbursement of reasonable fees and expenses involved.”²²⁹

²²⁹ *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, 2019 WL 3859763, at *5 (W.D. Mo. Aug. 16, 2019). *Accord, e.g., Sprague v. Ticonic*, 307 U.S. 161, 166-67 (1939) (recognizing federal courts' power to award costs from a common fund); *Been v. O.K. Indus., Inc.*, No. CIV-02-285-RAW, 2011 WL 4478766, at *3 (E.D. Okla. Aug. 16, 2011) (“Attorneys who recover a common fund for a class are entitled to . . . reasonable . . . costs and expenses from the fund.”); *Wakefield v. Wells Fargo & Co.*, No. 3:13-CV-05053-LB, 2015 WL 3430240, at *6 (N.D. Cal. May 28, 2015) (“Class counsel are entitled to reimbursement of reasonable out-of-pocket expenses.”); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 534–35 (E.D. Mich. 2003) (“Under the common

135. In my opinion, the costs sought by class counsel are eminently reasonable. The categories of expenses incurred are common in major class actions, and the amounts sought do not appear unreasonable for litigation of this magnitude. They are under the \$1.5 million amount that State Farm agreed not to oppose, and my opinion is that the full \$1.5 million would be reasonable. Notably, class counsel paid those enormous costs at great risk because they had no assurance that the litigation would ultimately succeed.

136. The amount sought is also reasonable when viewed as a percentage of the fund. The expenses represent only 0.42 percent of the fund. Costs of that magnitude are well within—indeed, below—the norm for major class actions. For example, in the *Enron* case, costs were 0.50 percent;²³⁰ in *Visa Antitrust*, costs were 0.55 percent;²³¹ in the *Tyco Securities Litigation*, costs were 0.87 percent;²³² in *Dahl v. Bain Capital Partners, LLC*, costs were 2.03 percent;¹⁵⁹ and in the *U.S. Foodservice Pricing Litigation*, costs were 2.7 percent.¹⁶⁰ Moreover, as noted, the costs are for standard (and expected) expenses for litigation like this, and thus do not raise any concerns.

fund doctrine, class counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement, including expenses incurred in connection with document productions, consulting with experts and consultants, travel and other litigation-related expenses.”).

²³⁰ See *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732 (S.D. Tex. 2008) (approximate \$39 million in costs compared to \$7.2 billion settlement).

²³¹ See *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503 (E.D.N.Y. 2003) (\$18.7 million in costs compared to \$3.4 billion settlement).

²³² See *In re Tyco Int'l Ltd. Litig.*, 535 F. Supp. 2d 249 (D.N.H. 2007) (\$28.9 million in costs compared to \$3.3 billion settlement).

IX. SERVICE AWARDS

A. The Proposed Service Awards for Class Representatives Are Reasonable

137. Class counsel seek service awards for the class representative plaintiffs in the amount of \$25,000 each. In my view, these proposed service awards are reasonable.

138. The class representatives invested significant time and effort on behalf of the class. For most, their work on this case took them away from their families and their work. As explained in detail in the Declaration of Norman Siegel (Siegel Att. Fees. Decl. ¶ 28), each of the class representatives performed critical tasks at every stage of the litigation, including providing policy documents, assisting in discovery, participating (when applicable) in trial-related efforts, and reviewing and approving the settlement.

139. In the Eighth Circuit and most other circuits, service awards are permitted as compensation to class representatives based upon: their efforts to “protect the interests of the class; the degree to which the class has benefitted from those actions; and the amount of time and effort plaintiffs expended in pursuing the litigation.”²³³ Courts often look to “the extent of the plaintiff’s personal involvement in the lawsuit in terms of discovery responsibilities and/or

²³³ *Tussey v. ABB, Inc.*, No. 06-04305-CV-C-NKL, 2012 WL 5386033, at *10 (W.D. Mo. Nov. 2, 2012), *vacated and remanded on other grounds*, 746 F.3d 327 (8th Cir. 2014) (citing *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002)); *accord, e.g., UFCW Local 880–Retail Food Emp’rs Joint Pension Fund v. Newmont Mining Corp.*, 352 F. App’x 232, 235–36 (10th Cir. 2009); *Hadix v. Johnson*, 322 F.3d 895, 898 (6th Cir. 2003) (noting that “incentive awards are efficacious ways of . . . rewarding individual efforts taken on behalf of the class,” noting that “[n]umerous courts have authorized incentive awards,” and citing cases approving service awards); *Lane v. Page*, 862 F. Supp. 2d 1182, 1234 (D.N.M. 2012) (noting that service awards serve “to compensate a class representative for risks they take and work they perform on behalf of the class”).

testimony at depositions or trial.”²³⁴ Moreover, courts frequently evaluate service awards “in comparison to the total recovery on behalf of the class.”²³⁵

140. Courts have approved substantial service awards where the class representatives undertook significant work on behalf of the class. The service awards sought here are substantial but not unprecedented, especially given the large common fund created. Courts have awarded multiples of what is requested here—\$100,000 or more— in a number of cases where the representatives performed major roles. In *Urethane*, the district court awarded service awards as high as \$150,000 to \$200,000 out of a fund of \$835 million.²³⁶ In *Boynton v. Headwaters, Inc.*, the court approved service awards of \$100,000 out of a fund of \$16 million, noting the “diligence” of the class representatives and the “significant financial sacrifices” they made in playing such active, time-consuming roles.²³⁷ Other examples of awards much higher than those sought here are *In re High-Tech Employee Antitrust Litigation*,²³⁸ *In re Titanium Dioxide Antitrust*

²³⁴ *Reibstein v. Rite Aid Corp.*, 761 F. Supp. 2d 241, 257 (E.D. Pa. 2011).

²³⁵ *Meijer, Inc. v. Warner Chilcott Holdings Co. III, Ltd.*, 565 F. Supp. 2d 49, 57 (D.D.C. 2008).

²³⁶ See *In re Urethane Antitrust Litig.*, No. 04-md-01616-JWL, slip op. at 2 (D. Kan. July 29, 2016) (Dkt. No. 3276).

²³⁷ No. 10:2-cv-01111-JPM-EGB, 2012 WL 12546853, at *3 (W.D. Tenn. Mar. 27, 2012).

²³⁸ No. 11-cv-02509-LHK, 2015 WL 5158730, at *17–18 (N.D. Cal. Sept. 2, 2015) (\$100,000–\$140,000 incentive payments out of \$16 million settlement fund).

Litigation,²³⁹ *Ivax Corp. v. Aztec Peroxides, LLC*,²⁴⁰ *In re Neurontin Antitrust Litigation*,²⁴¹ *Marchbanks Truck Services v. Comdata Network, Inc.*,²⁴² *Been v. O.K. Industries, Inc.*,²⁴³ *Columbus Drywall & Insulation, Inc. v. Masco Corp.*,²⁴⁴ *Velez v. Novartis Pharmaceutical Corp.*,²⁴⁵ and the *NFL Concussion Litigation*.²⁴⁶ Importantly, the Eighth Circuit has approved

²³⁹ No. 10-cv-00318(RDB), 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (\$125,000 service award out of \$163.5 million fund).

²⁴⁰ No. 1:02-cv-00593, slip op. at 2 (D.D.C. Aug. 24, 2005) (Dkt. No. 78) (\$100,000 service awards out of \$21 million fund).

²⁴¹ No. 02-cv-01830, slip op. ¶ 31 (D.N.J. Aug. 6, 2014) (Dkt. No. 114) (\$100,000 service awards out of \$190 million fund).

²⁴² No. 07-cv-01078, slip op. at 2, 8 (E.D. Pa. July 14, 2014) (Dkt. No. 713) (\$150,000 and \$75,000 service awards out of \$130 million fund).

²⁴³ No. CIV-02-285-RAW, 2011 WL 4478766, at *12 (E.D. Okla. Aug. 16, 2011) (\$100,000 service awards out of \$15.6 million fund).

²⁴⁴ No. 1:04-cv-03066-JEC, 2008 WL 11319972, at *3 (N.D. Ga. Mar. 4, 2008) (\$100,000 service awards out of \$37.25 million fund).

²⁴⁵ No. 04-cv-09194-CM, 2010 WL 4877852, at *4, *8, *28 (S.D.N.Y. Nov. 30, 2010) (\$125,000 service awards out of \$152.5 million fund).

²⁴⁶ *In re Nat'l Football League Players' Concussion Injury Litig.*, No. 2:12-md-02323-AB, 2018 WL 1635648, at *10–11 (E.D. Pa. Apr. 5, 2018) (\$100,000 service awards out of \$1 billion fund).

\$25,000 service awards.²⁴⁷ Under this case law, it is my opinion that service awards of \$25,000 per class representative—out of a massive \$325 million recovery—are reasonable.²⁴⁸

141. In evaluating the reasonableness of proposed service awards, courts consider a number of factors:

(1) actions the plaintiffs took to protect the class’s interests, (2) the degree to which the class has benefitted from those actions, and (3) the amount of time and effort the plaintiffs expended in pursuing litigation.²⁴⁹

Courts also consider the personal risk assumed by the class representative.²⁵⁰ I assess each of these factors below and conclude that each supports a \$25,000 award per class representative.

²⁴⁷ *Tussey v. ABB, Inc.*, 850 F.3d 951, 961 (8th Cir. 2017) (approving \$25,000 service award); *see also Thornburg v. Open Dealer Exch., LLC*, No. 17-06056-CV-SJ-ODS, at *5 (W.D. Mo. July 22, 2019) (approving \$15,000 service award); *Leonard v. John Hancock Life Ins. Co. of N.Y.*, No. 18-CV-04994-AKH, at *2 (S.D.N.Y. Mar. 17, 2022) (approving \$25,000 service award); *Mondrian v. Trius Trucking, Inc.*, 1:19-cv-00884-ADA-SKO, at *23 (E.D. Cal. Oct. 6, 2022) (approving \$10,000 service award out of fund of \$688,750).

²⁴⁸ I note that the class representative in *Vogt* was awarded \$15,000. But that award does not legally bind this Court in exercising its discretion with respect to the class representatives in this nationwide settlement, particularly given the historic \$325 million settlement fund negotiated here.

²⁴⁹ *Objector v. Symantec Corp.*, 855 F.3d 860, 867 (8th Cir. 2017) (citing *In re US Bancorp Litigation*, 291 F.3d 1035 (8th Cir. 2002)).

²⁵⁰ *Merryman v. JPMorgan Chase Bank, N.A.*, 2019 WL 6245396, at *8 (S.D.N.Y. Nov. 22, 2019); *accord, e.g., In re Motor Fuel Temperature Sales Practices Litig.*, 271 F.R.D. 263, 293 (D. Kan. 2010) (noting that service awards are justified “to compensate [class representatives] for personal risk incurred”); *In re Auto. Refinishing Paint Antitrust Litig.*, No. MDL-1426, 2008 WL 63269, at *7 (E.D. Pa. Jan. 3, 2008) (noting, in awarding service awards of \$30,000 each, that “[t]he Class Representatives not only conferred benefits on all of the Class Members, but also risked jeopardizing their existing relationships with their suppliers of automotive refinishing paint products”); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299–300 (N.D. Cal. 1995) (noting that, in evaluating the reasonableness of service awards, courts consider “the risk to the class representative in commencing suit, both financial and otherwise”).

142. **Actions to Protect the Interests of the Class.** As noted in ¶ 138, the class representatives took an active role in discovery and other proceedings, and they ensured that the settlement was fair and reasonable. The settlement could not have been achieved without class representatives who were willing to undertake these burdens.

143. **Benefit to the Class.** The benefit to the class is obvious: The class representatives did important heavy lifting that enabled class counsel to obtain a historic \$325 million nationwide settlement. With up to 760,000 class members, the total service awards represent a cost of fewer than 33 cents per class member. There is no doubt the benefits provided by the class representatives outweigh the insubstantial cost to the remaining class members. As the court noted in *In re Linerboard Antitrust Litigation*: “Like the attorneys in this case, the class representatives have conferred benefits on all other class members and they deserve to be compensated accordingly.”²⁵¹

144. **Time and Effort.** As noted in ¶ 138, the class representatives invested significant time ensuring that the case was effectively litigated and that the nationwide settlement was fair and reasonable.

145. **Risk.** The class representatives took a substantial risk that, despite all the hours they put into the case, they might end up recovering nothing. Had the litigation been unsuccessful for the class, the class representatives would have been ineligible for any service awards. Thus, like class counsel, the class representative undertook enormous risk.

²⁵¹ No. 98-cv-05055, 2004 WL 1221350, at *18 (E.D. Pa. June 2, 2004).

X. CONCLUSION

146. In my opinion, the attorneys' fees, expenses, and service awards sought by class counsel are reasonable and should be approved.

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct based on information known to me.

A handwritten signature in blue ink that reads "Robert H. Klonoff". The signature is written in a cursive style and is positioned above a horizontal line.

Robert H. Klonoff

February 13, 2023

APPENDIX A

CURRICULUM VITAE

ROBERT H. KLONOFF

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Date of Birth: March 15, 1955
Place of Birth: Portland, Oregon

EDUCATION:

J.D., Yale University, 1979

A.B., University of California, Berkeley, 1976, Majored in Political Science/Economics
(Highest Honors)

WORK EXPERIENCE:

Current Positions:

Jordan D. Schnitzer Professor of Law, Lewis & Clark Law School (since 2014)

Panelist, FedArb (alternative dispute resolution)

Prior Positions:

Dean of the Law School, Lewis & Clark Law School (2007-2014)

Douglas Stripp/Missouri Endowed Professor of Law, University of Missouri-
Kansas City School of Law (2003-2007)

Jones Day, Washington, D.C. (Partner, 1991-July 2003; Of Counsel, 1989-1991,
2003- 2007)

Adjunct Professor of Law, Georgetown University Law Center (class action law
and practice) (1999-2003)

Visiting Professor of Law, University of San Diego School of Law (1988-1989)

Assistant to the Solicitor General of the United States (1986-1988)

Assistant United States Attorney (Criminal Division, District of Columbia) (1983-1986)

Associate, Arnold & Porter, Washington, D.C. (1980-1983)

Law Clerk to the Honorable John R. Brown, Chief Judge, United States Court of Appeals for the Fifth Circuit (1979-1980)

Summer Associate, Baker & Botts, Houston, and Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C. (1978)

Summer Associate, Sidley & Austin, Washington, D.C. (1977)

SPECIAL HONORS AND ACHIEVEMENTS:

Recipient, Lewis & Clark Law School's 2020 Leo Levenson Award for Excellence in Teaching (the law school's most prestigious award)

Recipient, 2018 Albert Nelson Marquis Lifetime Achievement Award in the field of law from *Who's Who in America*

Member, 2011-2017, United States Judicial Conference Advisory Committee on Civil Rules (appointed by Chief Justice John G. Roberts, Jr., in 2011 as the sole voting member from the law school academy; reappointed May 2014 for a second three-year term)

Elected Member, International Association of Procedural Law

Fulbright Specialist Scholar at the University of Hong Kong Faculty of Law (2016)

Recipient, Oregon Consular Corps Award for Individual Achievement in International Outreach, Portland, Oregon (May 2013)

Associate Reporter, American Law Institute's *Principles of the Law of Aggregate Litigation* (class action project; drafts presented at several annual meetings; final version approved by full ALI in May 2009 annual meeting and published in May 2010)

Elected Member, American Law Institute

Fellow, American Academy of Appellate Lawyers

Sustaining Life Fellow, American Bar Foundation

Academic Fellow, Pound Institute

Recipient, 2007 Award for Outstanding UMKC Law Professor (based on vote of 3d year class)

2007 UMKC Law School Commencement Speaker (based on vote of 3d year class)

Recipient, 2006 UMKC Law School Elmer Pierson Teaching Award for Most Outstanding Teacher in the Law School (selected by the Dean)

Recipient, 2005 President's Award for Outstanding Service from the UMKC Law School Foundation

Reporter, 2005 National Conference on Appellate Justice (co-sponsored by the Federal Judicial Center, National Center for State Courts, and other organizations)

Co-Recipient, District of Columbia Bar's Frederick B. Abramson Award for Superior Service to the Community (June 1998)

Attorney General's Special Achievement Award for Outstanding Work as an Assistant to the Solicitor General of the United States (1986, 1987)

Attorney General's Special Achievement Award for Outstanding Work as an Assistant United States Attorney (1984, 1985)

The Benjamin N. Cardozo Prize for Best Moot Court Brief for Academic Year 1978-1979, Yale Law School

Semi-Finalist, Moot Court Oral Argument, Yale Law School (Fall, 1978)

Phi Beta Kappa

U.C. Berkeley's Most Outstanding Political Science Student (1976)

The Edward Kraft Award for Outstanding Work as a Freshman Student, U.C. Berkeley (1974)

MEMBERSHIPS:

U.S. Supreme Court Bar

Various Federal Circuit and District Courts

District of Columbia Bar

Missouri State Bar

Oregon State Bar

Multnomah County Bar

American Law Institute

American Bar Association

American Bar Association Committee on Class Actions & Derivative Suits (Section of Litigation)

PUBLICATIONS:

Books:

Wright & Miller, *Federal Practice and Procedure* (co-author with sole responsibility for the three volumes devoted to class actions)

Castanias & Klonoff, *Federal Appellate Practice in a Nutshell* (West 3d ed. forthcoming 2022)

Klonoff, *Introduction to the Study of U.S. Law: Cases and Materials* (West 2d ed. 2021) (with teacher's manual)

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Contributing Editor, *Criminal Practice Institute Trial Manual*, Young Lawyers Section, Bar Ass'n of D.C. (1986)

The Congressman as Mediator Between Citizens and Government Agencies: Problems and Prospects, 15 Harv. J. Legis. 701 (1979)

A Dialogue on the Unauthorized Practice of Law, 25 Villanova L. Rev. 6 (1979) (co-author)

The Problems of Nursing Homes: Connecticut's Non Response, 31 Admin. L. Rev. 1 (1979)

SIGNIFICANT LEGAL EXPERIENCE:

Argued eight cases before the U.S. Supreme Court

Authored dozens of U.S. Supreme Court filings (certiorari petitions, certiorari oppositions, merits briefs, reply briefs)

Briefed and argued numerous cases before various U.S. circuit and district courts and state trial and appellate courts

Tried dozens of cases (primarily jury trials)

Handled more than 100 class action cases as co-counsel, including *TransUnion v. Ramirez* (U.S. Supreme Court) and *In re National Prescription Opiate Litigation* (Sixth Circuit)

Served as an expert witness in numerous high profile class action and other aggregate cases, including the *British Petroleum Deepwater Horizon Oil Spill* litigation, the *National Football League Concussion* litigation, the *Volkswagen Clean Diesel* litigation, the *Wells Fargo Unauthorized Accounts* litigation, the *Equifax Data Breach* litigation, the *Syngenta Genetically Modified Corn* litigation, the *Broiler Chicken Antitrust* litigation, and the *Parkland Shooting* civil litigation.

Worked extensively with testifying and consulting experts on class action issues, including economists, securities experts, medical and scientific experts, and leading academics

Presented more than 100 cases to the grand jury while serving as an Assistant U.S. Attorney

Handled hundreds of sentencing hearings, preliminary hearings, and probation revocation hearings

SIGNIFICANT TEACHING AND SPEAKING ENGAGEMENTS

Speaker on Multidistrict Litigation and Moderator on Case Management Breakout Session, Mass Tort MDL Certificate Program, Bolch Judicial Institute, Duke University School of Law (Nov. 7, 2022) (held remotely)

Speaker on Class Actions and Moderator of Class Actions Breakout Session, 2022 Transferee Judges' Conference (approximately 125 federal judges), the Breakers, Palm Beach, Fla. (Nov. 1, 2022)

Speaker, Class and Aggregate Litigation in Europe and North America, New York University School of Law's Campus in Florence, Italy (July 8, 2022)

Speaker and Co-Organizer, McGovern Symposium on Civil Litigation, Duke University School of Law, Durham, North Carolina (May 27, 2022)

Moderator of Panel, Advanced MDL Certificate Program, Duke University School of Law, Durham, North Carolina (May 26, 2022)

Speaker, The Jewish Influences, Life & Legacy of Justice Ruth Bader Ginsburg, Cardozo Society of Washington State and Philadelphia Brandeis Society (April 5, 2022) (held remotely)

Panelist, Mass Torts/Bankruptcy Conference, Fordham University School of Law, New York, New York (Feb. 25, 2022)

Speaker on the Legacy of Justice Ruth Bader Ginsburg (held remotely), Temple Beth Sholom Synagogue, Salem Oregon (June 27, 2021)

Panel Moderator, Mass-Tort MDL Bench-Bar Conference (held remotely), George Washington University Law School, Washington, D.C. (June 10, 2021)

Speaker on Class Actions (held remotely), Oregon Association of Defense Counsel, Portland Oregon (May 20, 2021)

Speaker on Class Actions and Multidistrict Litigation (held remotely), South Ural State University Institute of Law, Chelyabinsk, Russia (April 8, 2021)

Speaker on Class Actions and Multidistrict Litigation (held remotely), Northwestern Pritzker School of Law, Complex Litigation Seminar, Chicago, Illinois (March 31, 2021, and again on March 30, 2022)

Speaker on Multidistrict Litigation, Class Actions, and the *Volkswagen Clean Diesel* Case (held remotely), Bahcesehir University, Istanbul, Turkey (July 15, 2020)

Speaker, Multidistrict Litigation Conference (held remotely), Emory University School of Law, Atlanta, Georgia (June 19, 2020)

Speaker, Class Action Conference, Fordham Law Review and the Institute for Law & Economic Policy, New York, New York (Feb. 27-28, 2020)

Keynote Speaker, Harold Schnitzer Spirit of Unity Peace Leadership Award Ceremony, Salem, Oregon (Nov. 20, 2019).

Conference Chair and Participant, 2019 Symposium on Class Actions and Aggregate Litigation, Pound Civil Justice Institute and Lewis & Clark Law School, Portland, Oregon (Nov. 1-2, 2019).

Speaker, International Class Actions Conference, Vanderbilt Law School, Nashville, Tennessee (Aug. 23, 2019)

Keynote Speaker, Pound Civil Justice Institute, Aggregate Litigation in State Court: Conference of State Court Appellate Judges, San Diego, California (July 27, 2019)

Visiting Professor of Law, University of Bologna School of Law, Ravenna, Italy (July, 2019) (faculty member for summer program on Transnational Torts)

Visiting Professor of Law, University of Trento School of Jurisprudence, Trento, Italy (May, 2019) (taught Introduction to U.S. Law)

Visiting Professor of Law, Royal University of Law and Economics, Phnom Penh, Cambodia (April 2019)

Speaker, Impact Fund Class Action Conference, San Francisco, California (Feb. 22, 2019)

Speaker on Class Actions, 17th Annual Impact Fund Class Action Conference, San Francisco, California (Feb. 23, 2019)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (December 2018) (taught course on U.S. Class Actions)

Speaker on the National Football League Concussion case, National Taiwan University, Taipei, Taiwan (December 20, 2018)

Speaker on Class Actions, Live Webinar Broadcast, Rule 23 Will Be Amended in Four Days: Are You Ready, American Bar Association (Nov. 27, 2018)

Speaker, American Bar Association's 22d Annual Institute on Class Actions, Chicago, Illinois (Oct. 18, 2018)

Speaker, MDL at 50 –The 50th Anniversary of Multidistrict Litigation, New York University School of Law, New York, New York (Oct. 12, 2018)

Visiting Professor of Law, University of Bologna School of Law, Ravenna, Italy (July 2018) (faculty member for environmental law program; lectured on environmental class actions)

Speaker on Class Actions, Freie University Faculty of Law, Berlin, Germany (June 26, 2018)

Visiting Professor of Law, Royal University of Law and Economics, Phnom Penh, Cambodia (April 2018) (taught course on Introduction to United States Law)

Co-Chair, Moderator, and Panelist, Posner on Class Actions, Columbia Law School, New York, New York (March 2, 2018)

Panelist on Civil Discovery, Vanderbilt University School of Law, Nashville, Tennessee (October 13, 2017)

Panelist on the Civil Rules Committee Process, University of Arizona College of Law, Tucson, Arizona (October 7, 2017)

Visiting Professor of Law, University of Bologna School of Law, Ravenna, Italy (July 2017) (faculty member for environmental law program; lectured on environmental class actions)

Visiting Professor of Law, University of Trento School of Jurisprudence, Trento, Italy (May 2017) (taught course on Introduction to U.S. Law)

Panelist on Class Actions, Beard Group, Class Action Money and Ethics Conference, New York, New York (May 1, 2017)

Visiting Professor of Law, Tel Aviv University, Tel Aviv, Israel (January 2017) (taught course on class actions)

Panelist on Class Actions, Tel Aviv University, Fifty Years of Class Actions – A Global Perspective (January 4, 2017)

Panelist on Class Actions, New York University Law School Conference on Rule 23@50, New York, New York (December 2, 2016)

Panelist on Class Actions, Appellate Judges Education Institute, Philadelphia, Pennsylvania (November 11, 2016)

Speaker on Class Actions, National Legal Aid Defender Association National Farmworker Conference, Indianapolis, Indiana (November 10, 2016)

Panelist on Class Actions, American Bar Association Class Action Institute, Las Vegas, Nevada (October 20, 2016)

Panelist, Duke University Law School Conference on Class Action Settlements, San Diego, California (October 6, 2016)

Fulbright Scholar, Hong Kong University School of Law (August- September 2016) (taught course on class actions and delivered campus-wide lecture on criminal procedure)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (June 2016) (taught course on Introduction to United States Law)

Speaker on Class Actions, University of Zagreb Law School, Zagreb, Croatia (May 11, 2016)

Panelist on Civil Litigation, Association of American Law Schools Annual Meeting, New York, New York (January 8, 2016)

Visiting Professor of Law, Bahçeşehir University School of Law, Istanbul, Turkey (December 2015) (taught Introduction to United States Law)

Participant, Conference on Civil Justice (Pound Institute) Emory University Law School, Atlanta, Georgia (October 15, 2015)

Participant, Conference on Class Actions, Duke Law School, Arlington, Virginia (July 23-24, 2015)

Participant, Conference on Class Actions, Defense Research Institute, Washington, D.C. (July 23-24, 2015)

Participant, Civil Procedure Workshop, Seattle University Law School, Seattle, Washington (July 17, 2015)

Panelist on Class Actions, Annual Meeting, American Association for Justice, Montreal, Canada (July 12, 2015)

Speaker on Class Actions, International Association of Procedural Law, Istanbul, Turkey (May 28, 2015)

Panelist, Subcommittee on Class Actions of U.S. Judicial Conference Advisory Committee on Civil Rules, American Law Institute Annual Meeting, Washington, D.C. (May 17, 2015)

Moderator, Ethical Issues in Class Actions and Non-Class Aggregate Litigation, American Law Institute Annual Meeting, Washington, D.C., (May 17, 2015)

Visiting Professor of Law, University of Trento School of Jurisprudence, Trento, Italy (March 2015) (taught U.S. Class Actions)

Speaker on Class Actions, European University Institute, Fiesole, Italy (February 23, 2015)

Visiting Professor of Law, University of Notre Dame, Fremantle Australia (January 2015) (taught course on U.S. Civil Rights and Civil Liberties)

Visiting Professor of Law, Universidad Sergio Arboleda, Bogota and Santa Marta, Colombia (December 2014) (taught course on Introduction to United States Law)

Visiting Professor of Law, National Taiwan University, Taipei, Taiwan (November 2014) (taught course on Introduction to United States Law)

Panelist, American Bar Association, National Institute on Class Actions, Chicago, Illinois (October 23, 2014)

Visiting Professor of Law, East China University of Political Science and Law, Shanghai, China (October 2014) (taught U.S. Class Actions)

Visiting Professor of Law, Herzen State Pedagogical University of Russia, St. Petersburg, Russia (September 2014) (taught U.S. Class Actions)

Visiting Professor of Law, Royal University of Law and Economics, Phnom Penh, Cambodia (July 2014) (taught Introduction to United States Law)

Speaker on U.S. Legal Education, Universidad Sergio Arboleda School of Law, Bogota, Colombia (June 3 and 5, 2014)

Speaker on Class Actions, Superintendencia de Industria y Comercio, Bogota, Colombia (June 3, 2014)

Speaker on Class Actions and the Fukushima Nuclear Accident, Waseda University School of Law, Tokyo, Japan (January 24, 2014)

Speaker on Class Actions, Osaka Bar Association, Osaka, Japan (January 23, 2014)

Speaker on Class Actions, East China University of Political Science and Law, Shanghai, China (January 15, 2014)

Speaker on Class Actions, AmCham Shanghai, Shanghai, China (January 14, 2014)

Speaker on Development of Animal Law in the Legal Academy, 2013 Animal Law Conference, Stanford Law School, Palo Alto, California (November 25, 2013)

Speaker on U.S. Law and Legal Education, Royal University of Law and Economics, Phnom Penh, Cambodia (October 1, 2013)

Speaker on U.S. Law and Legal Education, Paññāsāstra University of Cambodia, Phnom Penh, Cambodia (October 1, 2013)

Speaker on U.S. Legal Education, International Association of Law Schools International Deans' Forum, National University of Singapore Law School, Singapore (September 26, 2013)

Speaker on Class Actions, Japan Federation of Bar Associations, Tokyo, Japan (September 19, 2013)

Speaker on Class Actions, Waseda University School of Law, Tokyo, Japan (September 19, 2013)

Speaker on Ethics of Aggregate Settlements, American Association for Justice Annual Meeting, San Francisco, California (July 22, 2013)

Speaker on the British Petroleum Class Action Settlement, International Water Law Conference, National Law University of Delhi, Delhi, India (May 31, 2013)

Speaker on U.S. Supreme Court Confirmation Process, Jewish Federation of Greater Portland's Food for Thought Festival, Portland, Oregon (April 21, 2013)

Speaker on Class Actions, Class Action Symposium, George Washington University Law School, Washington, D.C. (March 8, 2013)

Speaker on Class Actions, Impact Fund Class Action Conference, Oakland, California (March 1, 2013)

Speaker on Class Actions, Hong Kong University Department of Law (November 15, 2012)

Speaker on Class Actions, Fudan University Law School (Shanghai, China) (November 13, 2012)

Keynote Speaker, National Consumer Law Center Symposium, Seattle, Washington (October 28, 2012)

Speaker, American Bar Association, National Institute on Class Actions, Chicago, Illinois (October 25, 2012)

Speaker, Conference on Class Actions, Washington University St. Louis School of Law and the Institute for Law and Economic Policy (April 27, 2012)

Speaker, Conference on Class Actions, Loyola Chicago School of Law (April 13, 2012)

Panelist on leadership and world peace with Former South African President F.W. De Klerk, University of Portland (February 29, 2012)

Panelist on class actions before the Standing Committee on Rules of Practice and Procedure, Phoenix, Arizona (January 5, 2012)

Speaker on Class Actions Lawsuits in the U.S., University of the Philippines, College of Law, Quezon City, Philippines (August 2011)

Speaker on Environmental Class Actions, Kangwon University Law School, Chuncheon, South Korea (August 2011)

Speaker on Class Actions, Federal Judicial Center Conference on Class Actions, Duke University School of Law (May 20, 2011)

Speaker, Conference on Aggregate Litigation, University of Cincinnati College of Law (April 1, 2011)

Speaker on Class Actions, Seoul National University School of Law (May 18, 2010)

Keynote Speaker (addressing US Supreme Court confirmation process), Alaska Bar Annual Meeting (April 28, 2010)

Speaker, Conference on the Future of Animal Law, Harvard Law School (April 11, 2010)

Speaker, Conference on Aggregate Litigation: Critical Perspectives, George Washington University Law School (Mar. 12, 2010)

Speaker, U.S. Supreme Court Confirmation Process, Multnomah County Bar Association and City Club of Portland, (Sept. 30, 2009)

Speaker on Class Actions, American Legal Institutions, and American Legal Education at National Law Schools of India in Bangalore, Hyderabad, Calcutta, Jodhpur, and Delhi (August 2009)

Speaker, China/U.S. Conference on Tort and Class Action Law, Renmin University of China School of Law, Beijing, China (July 11-12, 2009)

Speaker on Class Actions, Southeastern Association of Law Schools annual meeting, Palm Beach, Florida (August 1, 2008)

Speaker on Class Actions, National Foundation for Judicial Excellence (meeting of 150 state appellate court judges), Chicago, Illinois (July 12, 2008)

Speaker on Class Actions, Practising Law Institute, New York, NY (July 10, 2008)

Speaker at Conference on Class Actions in Europe and North America, sponsored by New York University School of Law, the American Law Institute, and the European University Institute, Florence, Italy (June 13, 2008)

Speaker on Class Actions at the American Bar Association Tort and Insurance Section Meeting, Washington, D.C. (Oct. 26, 2007)

Speaker on Antitrust Class Actions at the American Bar Association's Annual Antitrust Meeting, Washington D.C. (April 18, 2007)

Chair, Organizer, and Moderator of Class Action Symposium at UMKC School of Law (April 7, 2006) (other speakers (26 in all) included, *e.g.*, Professors Arthur Miller, Edward Cooper, Sam Issacharoff, Geoffrey Miller, and Linda Mullenix, as well as several prominent federal judges and practicing lawyers)

Speaker on Class Actions, Missouri CLE (Nov. 18, 2005)

Speaker on Class Actions, Practising Law Institute (July 29, 2005)

Speaker on Class Actions, Kansas CLE (June 23, 2005)

Speaker on Class Actions at Bureau of National Affairs Seminar on the Class Action Fairness Act of 2005 (June 17, 2005)

Visiting Lecturer on Class Actions, Peking University (May 30-June 3, 2005)

Speaker on Oral Argument, American Bar Association 2005 Section of Litigation Annual Conference (April 22, 2005) (part of panel including Second Circuit Chief Judge Walker and several others)

Speaker on Class Actions, Federal Trade Commission/Organization for Economic Cooperation and Development, Workshop on Consumer Dispute Resolution and Redress in the Global Marketplace (April 19, 2005)

Speaker at Antitrust Class Action Symposium, University of Western Ontario College of Law (April 1, 2005)

Speaker at Class Action Symposium, Mississippi College of Law (February 18, 2005)

Speaker on Class Actions, Practising Law Institute (July 30, 2004)

Visiting Lecturer on Class Actions, Peking University (June 2004)

Visiting Lecturer on Class Actions, Tsinghua University (June 2004)

Speaker at Class Action Symposium, Michigan State University (April 16-17, 2004)

Speaker on U.S. Supreme Court advocacy, David Prager Advanced Appellate Institute (Kansas City Metropolitan Bar Association) (Feb. 27, 2004)

Speaker on Class Actions, Institute of Continuing Legal Education in Georgia (Oct. 24, 2003)

Speaker on Class Actions, Practising Law Institute (July 31, 2003)

Speaker on Class Actions, Practising Law Institute (Aug. 5, 2002)

Speaker on Class Actions, Practising Law Institute (Aug. 16, 2001)

Speaker on many occasions throughout the country on “Sponsorship Strategy” (1990-present) and advocacy before the U.S. Supreme Court (1988-present)

OTHER PROFESSIONAL ACTIVITIES:

Member of American Bar Association Group Evaluating Qualifications of Merrick Garland to serve on the U.S. Supreme Court (reviewed Judge Garland’s civil procedure opinions)

Member, Editorial Board of International Journal of Law in a Changing World (South Ural University, Chelyabinsk, Russia)

Board Member, The Judge John R. Brown Scholarship Foundation

Advisory Board, The Flawless Foundation (an organization that serves troubled children)

Member, Board of Directors, Citizens’ Crime Commission (Portland, Oregon) (2007-2011)

Advisory Board Consulting Editor, *Class Action Litigation Report* (BNA)

Served on numerous UMKC School of Law committees, including Programs (Chair), Promotion and Tenure, Appointments, and Smith Chair Appointment

Chair of pro bono program for all 27 offices of Jones Day (2000-2004); also previously Chair of Washington office pro bono program (1992-2003)

Member, Board of Directors, Bread for the City (a D.C. public interest organization providing medical, legal, and social services) (2001-2003)

Master, Edward Coke Appellate Practice Inn of Court in Washington, D.C. (other participants include Ted Olson, Seth Waxman, Ken Starr, Walter Dellinger, and several sitting appellate judges) (2001-2003)

Member, Board of Directors, Washington Lawyers' Committee for Civil Rights and Urban Affairs (2000-2003); Advisory Board Member (2003-present)

Member, D.C. Court of Appeals Committee on Unauthorized Practice of Law (1997-2000)

Handled and supervised numerous pro bono matters (*e.g.*, death penalty and other criminal defense, civil rights, veterans' rights)

Played a major role in establishing a walk-in free legal clinic in Washington, D.C.'s Shaw neighborhood

VOLUNTEER WORK:

Numerous guest speaker appearances at public schools and retirement homes; volunteer at local soup kitchen; volunteer judge for Classroom Law Project.